

(29,891)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1924

No. 183

C. O. LINDER, PETITIONER,

vs.

THE UNITED STATES OF AMERICA

ON A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT
COURT OF APPEALS FOR THE NINTH CIRCUIT

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Names and Addresses of Attorneys of Record.

W. H. PLUMMER, Mohawk Building, Spokane,
Washington,

Attorney for Plaintiff in Error.

And

H. SYLVESTER GARVIN, Federal Building,
Spokane, Washington,

FRANK R. JEFFREY, Federal Building, Spo-
kane, Washington,

Attorneys for Defendant in Error. [1*]

UNITED STATES OF AMERICA.

Eastern District of Washington, Northern Divi-
sion, United States District Court.

April Term, 1922.

Indictment.

FIRST COUNT.

The Grand Jurors of the United States chosen,
selected and sworn in and for the Northern Divi-
sion of the Eastern District of Washington, upon
their oaths present:

That CHARLES O. LINDER, whose other or
true name is to the Grand Jurors unknown, here-
inafter in this indictment called the defendant,
late of the County of Spokane, State of Washing-
ton, heretofore, to wit: on or about the thirtieth
day of March, 1922, at Spokane, in the Northern

*Page-number appearing at foot of page of original certified Tran-
script of Record.

Division of the Eastern District of Washington, and within the jurisdiction of this Court, did then and there violate the Act of December 17, 1914, entitled "An Act to provide for the registration of, with Collectors of Internal Revenue, and to impose a special tax upon all persons who produce, import, manufacture, compound, deal in, dispense, sell, distribute, or give away opium or coca leaves, their salts, derivatives, preparations, and for other purposes," as amended February 24, 1919, in that he did then and there knowingly, wilfully and unlawfully sell, barter and give to Ida Casey a compound, manufacture and derivative of opium, to wit: a quantity of morphine, the exact amount being to the Grand Jurors unknown, not in pursuance of any written order of Ida Casey on a form issued for that purpose by the Commissioner of Internal Revenue of the United States; that the defendant was a duly licensed physician and registered under the Act; that Ida Casey was a person addicted to the habitual use of morphine and cocaine and known by the defendant to be so addicted; that Ida Casey did not require the administration of morphine by reason of any disease other than such addiction; that the defendant did not [2] dispense any of the morphine for the purpose of treating any disease or condition other than such addiction; that none of the morphine so dispensed by the defendant was then and there administered to or intended by the defendant to be administered to Ida Casey by the defendant or any nurse, or person acting under the direction

of the defendant; nor *were* any of the morphine then and there consumed or intended to be consumed by Ida Casey in the presence of the defendant, but that all of the morphine was put in the possession or control of Ida Casey with the intention on the part of the defendant that Ida Casey would use the same by self-administration in divided doses extending over a period of time, the amount of morphine dispensed being more than sufficient or necessary to satisfy the craving of Ida Casey therefor if consumed by her all at one time; that Ida Casey was not in any way restrained or prevented from disposing of the morphine in any manner she saw fit and that the morphine so dispensed by the defendant was in the form in which said drugs are usually consumed by persons addicted to the habitual use thereof to satisfy their craving therefor and were adapted for consumption. Contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

COUNT II.

And the Grand Jurors aforesaid upon their oaths do further present:

That CHARLES O. LINDER, whose other or true name is to the Grand Jurors unknown, hereinafter in this indictment called the defendant, late of the County of Spokane, State of Washington, heretofore, to wit: on or about the first day of April, 1922, at Spokane, in the Northern Division of the Eastern District of Washington, and within the jurisdiction of this Court, did then and

there violate the Act of December 17, 1914, entitled "An Act to provide for the registration of, with Collectors of Internal Revenue, and to impose a special tax upon all persons who produce, [3] import, manufacture, compound, deal in, dispense, sell, distribute, or give away opium or coca leaves, their salts, derivatives, preparations, and for other purposes," as amended February 24, 1919, in that he did then and there knowingly, wilfully and unlawfully sell, barter and give to Ida Casey a compound, manufacture and derivative of opium, to wit: one (1) tablet of morphine and a compound, manufacture and derivative of coca leaves, to wit: three (3) tablets of cocaine, not in pursuance of any written order of Ida Casey on a form issued for that purpose by the Commissioner of Internal Revenue of the United States; that the defendant was a duly licensed physician and registered under the Act; that Ida Casey was a person addicted to the habitual use of morphine and cocaine and known by the defendant to be so addicted; that Ida Casey did not require the administration of either morphine or cocaine by reason of any disease other than such addiction; that the defendant did not dispense any of the drugs for the purpose of treating any disease or condition other than such addiction; that none of the drugs so dispensed by the defendant was administered to or intended by the defendant to be administered to Ida Casey by the defendant or any nurse, or person acting under the direction of the defendant; nor were any of the drugs consumed or intended to

be consumed by Ida Casey in the presence of the defendant, but that all of the drugs were put in the possession or control of Ida Casey with the intention on the part of the defendant that Ida Casey would use the same by self-administration in divided doses over a period of time, the amount of each of said drugs dispensed being more than sufficient or necessary to satisfy the craving of Ida Casey therefor if consumed by her all at one time; that Ida Casey was not in any way restrained or prevented from disposing of the drugs in any manner she saw fit and that the drugs so dispensed by the defendant were in the form in which said drugs are usually consumed by persons addicted to the habitual use thereof to satisfy their craving therefor and were adapted for consumption. Contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States. [4]

COUNT III.

And the Grand Jurors aforesaid upon their oaths do further present:

That CHARLES O. LINDER, whose other or true name is to the Grand Jurors unknown, hereinafter in this indictment called the defendant, late of the County of Spokane, State of Washington, State of Washington, heretofore, to wit: on or about the twenty-ninth day of March and subsequent dates, the last date being about April first, 1922, at Spokane, in the Northern Division of the Eastern District of Washington and within the

jurisdiction of this Court did then and there violate the Act of December 17, 1914, entitled "An Act to provide for the registration of, with Collectors of Internal Revenue, and to impose a special tax upon all persons who produce, import, manufacture, compound, deal in, dispense, sell, distribute, or give away opium or coca leaves, their salts, derivatives, preparations, and for other purposes," as amended February 24, 1919, in that being a duly licensed physician and registered under the terms of said act, he did then and there knowingly, wilfully, illegally and unlawfully dispense and distribute a compound, manufacture and derivative of opium, to wit: morphine and a compound, manufacture and derivative of coca leaves, to wit: cocaine, the exact amounts being to the Grand Jurors unknown, to one Ida Casey, not in the course of the legitimate pursuit of his profession, nor for the purpose of effecting a cure of a habit, but for the purpose of keeping her comfortable by satisfying her craving for narcotic drugs, she, the said Ida Casey being at the time addicted to the use of morphine and cocaine and being what is commonly known and called a "dope fiend"; which said fact was then and there known to the defendant and that the said defendant did on each of said dates fail to keep a proper record of the date, the name and address of the person to whom, and the purpose for which said morphine and cocaine was dispensed and distributed as required by law. Contrary to the form of the statute in such case

made and provided and against the peace and dignity of the United States.

FRANK R. JEFFREY,
United States Attorney. [5]

A true bill.

HAL J. COLE,
Foreman.

Presented to the Court by the foreman of the Grand Jury in open court, in the presence of the Grand Jury and filed in the United States District Court, June 26, 1922.

ALAN G. PAINE,
Clerk.

By A. P. Rumburg,
Deputy. [6]

In the District Court of the United States for the Eastern District of Washington, Northern Division.

No. 3981.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DR. CHARLES O. LINDER,

Defendant.

Verdict.

We, the jury in the above-entitled cause, find the defendant Not Guilty as to First Count, Guilty as to Second Count, Not Guilty as to Third Count,

as charged in the Indictment. We recommend leniency of the Court.

F. J. WALKER,
Foreman.

Filed in the U. S. Dist. Court, Eastern District of Washington. Oct. 10, 1922. Alan G. Paine, Clerk. By A. P. Rumburg, Deputy. [7]

No. 3981.

United States District Court, Eastern District of Washington, Eastern Division.

Plaintiff: UNITED STATES OF AMERICA.

Attorney for Plaintiff: U. S. ATTORNEY.

Defendant: DR. CHARLES O. LINDER.

Attorney for Defendant: W. H. PLUMMER.

Nature of Action: Vio. Narcotic Act.

JUDGE'S NOTES.

1922.

June 26. A true bill.

Oct. 9. Arraignment and plea "Not Guilty"; jury impanelled and sworn and testimony taken.

Oct. 10. Case submitted; verdict "Guilty" as to second count. "Not Guilty" as to first and third counts.

Oct. 26. Sentence: 2 months Spokane County Jail, \$1,000.00 fine.

Filed in the U. S. District Court, Eastern District of Washington. October 31, 1922. Alan G. Paine, Clerk. By A. P. Rumburg, Deputy. [8]

In the District Court of the United States for the
Eastern District of Washington, Northern
Division.

No. 3981.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DR. CHAS. O. LINDER,

Defendant.

Petition for Order to Quash Search-Warrant, etc.

To the Honorable FRANK H. RUDKIN, Judge of
the Above-entitled Court.

The undersigned, your petitioner, would respectfully represent and state that on, to wit, the first day of April, 1922, and for a great many years prior thereto, he was and had been a regular and practicing physician and surgeon, practicing his profession in the City of Spokane, State of Washington, and on said date had his offices, being numbered 609-614 Jamieson Building in said city, and had complied with all of the laws of the State and United States required of him as such physician and surgeon, and had been, and was, duly registered as provided by the Harrison Narcotic Act, being an act of Congress of the United States of America; that it was necessary and habitual with affiant that he keep on hand, and in his offices, numerous drugs of different quantities for use in his profession in the treatment of his patients;

that on, to wit, the 1st day of April, 1922, A. E. Gatens, Federal Narcotic Agent, signed and swore to an affidavit for search-warrant before the Honorable John L. Dirks, United States Commissioner, residing at Spokane, Washington, which affidavit and search-warrant, and the order of said commissioner are as follows: [9]

AFFIDAVIT FOR SEARCH-WARRANT.

United States of America,
Eastern District of Washington,—ss.

Be it remembered, that on this day, before me, the undersigned, a United States Commissioner for the Eastern District of Wash., came A. E. Gatens, who being by me duly sworn, deposes and says that the laws of the United States, namely, the Harrison Narcotic Act, Revised Statutes, are being violated by reason of the facts, to wit: The possession and sale of narcotics by Dr. Chas. O. Linder at his offices at 609 to 614 Jamieson Bldg., in the City of Spokane, Wash. I make this affidavit on information as to the facts stated given me by C. E. Brown of Spokane, of said Dr. Charles O. Linder and being situate in the City of Spokane and state of Wash., and within the district above named.

A. E. GATENS (Affiant).

Sworn to before me, and subscribed in my presence, this 1st day of April, A. D. 1922.

[Seal]

JOHN L. DIRKS,

United States Commissioner as Aforesaid.

This cause coming on for hearing on the applica-

tion for a search-warrant supported by the affidavit above set forth, the undersigned commissioner thereupon being satisfied that there is probable cause to believe that the grounds set forth in said application and affidavit exist, and that the law is being violated as charged, does hereby so find.

[Seal]

JOHN L. DIRKS,

United States Commissioner as Aforesaid. [10]

That, upon the filing of said affidavit, and without any further or other proceedings in said cause had before said commissioner, the said commissioner, John L. Dirks, issued a search-warrant, directing and authorizing said A. E. Gatens to search the offices of affiant, and said A. E. Gatens, accompanied by three assistants, to wit, one Keenan, Akers, and Peyton, under the direction of said Gatens, did forcibly and against the protest of affiant, search the offices and person of affiant while he, the affiant was engaged with a patient in said offices, and forcibly, and without any warrant of law, took from the possession of affiant, and from his offices, certain quantities of drugs, medical appliance, money, and other articles of personal property, which were taken by said Gatens and his associates for the purpose of being used as evidence against affiant in a contemplated prosecution of him under the Harrison Narcotic Act, and in said forcible search, obtained other facts, data and information for the purpose of being used by said Gatens and the Government of the United States in said contemplated prosecution

of affiant; that said search of said offices of affiant occurred about 4:00 o'clock in the afternoon of said April 1st; that, at said time, affiant had in his office and under physical examination, a woman patient of his, who was clad only in a kimona, but notwithstanding this, said Gatens and his associates entered said private consultation room where said lady was clad as aforesaid and commenced the forcible searching of his office, greatly humiliating and embarrassing said woman patient, and would not desist therefrom until the patient could be properly clad, or that affiant could complete his examination of her; that, at said time, in the waiting-room of affiant, several patients were waiting to be treated and examined by affiant, but notwithstanding this, said Gatens, with his associates, forcibly, boisterously and in an ungentlemanly and forcible manner, took charge of said offices, much to the humiliation of said waiting patients, this affiant, and his business and occupation as a physician; that, notwithstanding the fact that no [11] warrant of arrest had been sworn out for affiant, nevertheless, said Gatens, without any pretext of having one, or observing affiant doing anything contrary to the laws of the United States, and simply on information of a certain woman, whom he had employed, arrested affiant, compelled him to close up his offices, and was by said Gatens, incarcerated in the city jail until about 7:30 o'clock of said evening, when he was compelled to appear before the Honorable John L. Dirks, United States Commissioner, and there for the first time, said

Gatens swore to a complaint and obtained a warrant for arrest of said affiant, which warrant was served upon affiant in the offices of said Dirks after he had been previously incarcerated for several hourse in the city jail.

Affiant alleges that said affidavit upon which said search-warrant was based is wholly insufficient in law, is absolutely void and gives the Court no jurisdiction to search the premises and offices of affiant, and was wholly void and without effect as will appear upon the face thereof; and that said search-warrant was issued by said commissioner, based wholly and exclusively upon said affidavit of said Gatens, as is shown by the order attached to said affidavit, and affiant further says that said commissioner, prior to the issuance of said search-warrant, failed and neglected to examine on oath the said A. E. Gatens, or anyone else, or any witness produced by him, neither did he require or take their depositions in writing or make any investigation of the facts referred to in the affidavit of said Gatens, or do anything whatsoever, excepting to file said affidavit and issue said search-warrant thereon; that there was no probable cause shown for the issuance of said search-warrant, and said search-warrant when issued was wholly insufficient in law, and wholly void and of no effect; that the same was not served upon affiant or shown to affiant, or read to him; that affiant demanded of said Gatens his authority to search and he showed his badge which he had pinned to his clothing saying that "This is sufficient." [12]

That said Gatens refused and neglected to give a copy of said warrant, together with a receipt for the property taken, specifying it in detail, to this affiant, or to anyone in his behalf, or to leave the same in plaintiff's offices; neither did he, said Gatens, return said warrant to said commissioner, or deliver him a written inventory of the property taken; that no inventory was made publicly, or in the presence of affiant, from whose possession it was taken, either verified by the affidavit of said Gatens, or at all; that no copy of said inventory has ever been made, furnished, or delivered to affiant; and that the law, with reference to search-warrants, provided by the Congress of the United States has not been carried out, observed or complied with in any particular.

WHEREFORE, your petitioner prays that this Court make an order

First, that the search-warrant issued in the above-entitled cause, by said Commissioner, be quashed, annulled and declared of no effect;

Second, that said Gatens, or the person to whom the possession of said personal property taken from affiant has been delivered, shall return all of said personal property, immediately, to affiant, and that all evidence in respect thereto or which was obtained during said unlawful search of affiant's premises shall be suppressed and said Gatens, and those acting under, or through him, they, or either of them, be prohibited from testifying or giving any information to the grand jury or to this court which he, or they or any of them, has

received or obtained during said unlawful search and seizure of affiant's property.

W. H. PLUMMER,
Attorney for Petitioner. [13]

State of Washington,
County of Spokane,—ss.

Dr. Chas. O. Linder, being first duly sworn, deposes and says: That he is the petitioner in the above petition; that he has heard read the foregoing petition, knows the contents thereof, and the facts therein stated are true.

DR. C. O. LINDER.

Subscribed to and sworn to before me this 20th day of April, 1922.

W. H. PLUMMER,
Notary Public for the State of Washington, Residing at Spokane.

Service of above petition accepted this 22 day of April, 1922.

F. R. JEFFREY,
U. S. Dist. Atty.

Filed in the U. S. Dist. Court, Eastern District of Washington. April 22, 1922. Alan G. Paine, Clerk. By Eva M. Hardin, Deputy. [14]

UNITED STATES OF AMERICA.

Eastern District of Washington, Northern Division,
United States Court.

No. 3981.

UNITED STATES,

Plaintiff,

vs.

CHARLES O. LINDER,

Defendant.

**Motion for Judgment of Acquittal Notwithstanding
the Verdict of the Jury.**

Comes now the above-named defendant, and upon the records, files and proceedings in this cause, and upon the verdict of the jury rendered at the trial thereof, moves the Court for judgment of acquittal and not guilty, notwithstanding the verdict of the jury, upon the grounds and for the reason as follows:

I.

That the verdict of the jury was that the defendant was not guilty of the first count in the indictment, that he was not guilty of the third count in the indictment, that he is guilty of the second count in the indictment.

II.

That by finding the defendant not guilty of the first and third counts in the indictment, he could not be guilty of the second count in the indictment. That the third count in the indictment embraces

both the first and second counts in the indictment, and finding him not guilty of the first and third counts in the indictment is equivalent to finding him not guilty of the second count in the indictment, that the findings of the jury are inconsistent.

W. H. PLUMMER,

Attorney for Defendant.

Filed in the U. S. Dist. Court, Eastern District of Washington. Oct. 11, 1922. Alan G. Paine, Clerk.
By A. P. Rumburg, Deputy. [15]

UNITED STATES OF AMERICA.

Eastern District of Washington, Northern Division,
United States Court.

No. 3981.

UNITED STATES,

Plaintiff,

vs.

CHARLES O. LINDER,

Defendant.

Motion in Arrest of Judgment.

Comes now the above-named defendant, and moves the Court in arrest of judgment, upon the verdict of the jury in the above-entitled cause, upon the ground and for the reason that the verdict of the jury finding the defendant guilty on the second count in the indictment is wholly inconsistent with the finding of the jury of not guilty of the first and third counts in the indictment, and the

action of the jury in finding defendant guilty of the second count in the indictment, is not justified by the evidence and especially in view of their finding defendant not guilty upon the first and third counts in the indictment, upon the same evidence.

W. H. PLUMMER,

Attorney for Defendant.

Filed in the U. S. Dist. Court, Eastern Dist. of Washington. Oct. 11, 1922. Alan G. Paine, Clerk. By A. P. Rumburg, Deputy. [16]

In the District Court of the United States for the
Eastern District of Washington, Northern
Division.

No. 3981.

UNITED STATES,

Plaintiff,

vs.

CHARLES O. LINDER,

Defendant.

Amended Motion for New Trial.

Comes now the above defendant, and files and serves this his amended motion for new trial, that is to say, should defendant's motion for a judgment notwithstanding the verdict of the jury upon the second count of the indictment and his motion in arrest of judgment be overruled by the Court, then the Court consider this, his motion for new trial, upon and the setting aside of the verdict of the jury

upon a second count of the indictment in this cause, upon the following grounds, to wit:

I.

Irregularity in the proceedings of the Court and jury, and adverse party, and orders of this Court, and abuse of discretion, by which defendant was prevented from having a fair trial.

II.

Misconduct of the jury.

III.

Accident and surprise, which ordinary prudence could not have guarded against.

IV.

Newly discovered evident, material for the defendant, which he could not with a reasonable diligence have discovered and produced at the trial.

V.

Error in law, occurring at the trial. This motion is based [17] upon the records, files and proceedings in this court and the affidavits hereto attached. The error of the law, occurring at the trial, which defendant hereby specifies are as follows: That it was necessary in order that the Government should maintain its case in chief, that it prove that defendant knew or had reason to believe that the witness, Ida Casey, was a dope addict. That the government offered the testimony of Ida Casey, in which she testified that she notified the defendant on the 30th day of March, 1922, when she first visited him, that she was addicted to the use of narcotics, whereupon the Government closed its case on that subject, and with that testimony, thereafter de-

fendant denied any knowledge of said dope addiction, and thereafter the court permitted the Government's witness, Dr. Ransom, to testify that he had known Ida Casey for several months, that any doctor could tell by the examination of her arms, that she was addicted to the use of narcotics by hypodermic injection, said Ransom being the last witness for the Government in rebuttal. That defendant objected to said testimony, on the ground that it was not rebuttal, and on the ground of surprise. That immediately after Dr. Ransom left the stand the Government rested, and the Court immediately ordered that counsel make their arguments to the jury, the defendant having no opportunity to rebut the evidence of said Ransom, or secure evidence for that purpose.

W. H. PLUMMER.

Attorney for Defendant.

Filed in the U. S. District Court, Eastern District of Washington. October 21, 1922. Alan G. Paine, Clerk. B. A. P. Rumburg, Deputy. [18]

In the District Court of the United States for the
Eastern District of Washington, Northern
Division.

No. 3981.

UNITED STATES,

Plaintiff,

vs.

CHARLES O. LINDER,

Defendant.

Affidavit of W. H. Plummer.

W. H. Plummer, being first duly sworn, deposes and says: That he is now and at all times has been the attorney for defendant in the above-entitled action, and had charge of defendant's trial in the above court. That he was greatly surprised by the testimony given by Dr. Ransom. After testimony was given he had no opportunity to interview witness or secure evidence to rebut the same, and he did not know of the evidence, which can now be adduced to dispute the evidence of Dr. Ransom, as shown by the affidavit hereto attached, and could not have anticipated the evidence of Dr. Ransom, and by permitting said evidence to be introduced as rebuttal immediately preceding the Court's order of counsel to proceed with their arguments to the jury, he had no opportunity to either consult with his client or other witnesses, to dispute said testimony, and defendant and his counsel were taken wholly by surprise, which ordinary care and prudence could not guard against.

W. H. PLUMMER.

Subscribed to and sworn to before me this 19th day of October, 1922.

[Seal]

J. P. MURPHY,
Notary Public for the State of Washington, Residing at Spokane. [19]

State of Washington,
City of Spokane,—ss.

Personally appeared Fred Roberts, who first be-

ing duly sworn, deposes and says: That one Mrs. Ida Casey was employed by him from about December 9th, 1921, to about April 12th, as house-keeper, at which latter date she gave herself up to the City Police; That during this period of employment said Mrs. Casey worked a great deal of the time in her bare arms and that the affiant had every opportunity to inspect the conditions of said Mrs. Casey's arm; that he find them to be wholly free from any blue marks, spots, affected skin, or any indication of the use of the hypodermic needle whatsoever. That toward the end of the employment of said Mrs. Casey, the affiant discovered powders in a small pasteboard box in the belongings of said Mrs. Casey, evidently taken by the mouth by the woman; that the affiant afterwards threwed the powders in the stove.

FRED ROBERTS,

Manager of the Manchester Chicken Ranch, 2907
South Oak St., Spokane. Phone Main 4605—J.

Subscribed and sworn to before me this 19th day
of October, 1922.

[Seal]

C. E. MALLETT,

Notary Public for the State of Washington, Resid-
ing at Spokane. [20]

In the District Court of the United States for the
Eastern District of Washington, Northern
Division.

No. 3981.

UNITED STATES,

Plaintiff,

vs.

CHARLES O. LINDER,

Defendant.

Affidavit of Mrs. C. S. Rodgers and Fred Manchester Roberts.

The undersigned being first duly sworn on oath, deposes and says: That they are well acquainted with Ida Casey, one of the witnesses, who testified for the United States in the above-entitled cause. That within two or three weeks after the first day of April, 1922, that they and each of them had occasion to examine the arms of Ida Casey; that on one of the arms of said Ida Casey there appeared two very indistinct indications of the use of a hypodermic needle, which had become almost obliterated, excepting upon close inspection. That the other arm of Ida Casey was wholly free of any indication of the use of a hypodermic needle and the injection of any narcotics therein.

MRS. C. S. RODGERS,

Business at 821 N. Monroe St.

FRED MANCHESTER ROBERTS,

2907 So. Oak St. Phone Main 4608—J.

Subscribed and sworn to before me this 19th day of October, 1922.

[Seal]

C. E. MALLETTE,

Notary Public for the State of Washington, Residing in Spokane. [21]

State of Washington,
County of Spokane,—ss.

Personally appeared Mrs. C. S. Rodgers, who first being duly sworn, deposes and says: That she is well acquainted with Mrs. Ida Casey, and that she has been so acquainted for a period of three years; that during this period of acquaintance with said Mrs. Casey, there never were any blue marks, spots or skin affections whatsoever, indicating the use of the hypodermic needle on the arms of said Mrs. Casey. Further the affiant states that she saw the arms of said Casey at intervals while she worked as housekeeper on the Manchester Chicken Range, at #2907 So. Oak St., this City, and inspected them within two weeks following April 1st, 1922; that the arms of said Mrs. Casey were wholly free from any marks indicating the use of the hypodermic needle.

MRS. C. S. RODGERS,

Business Address: N. 821 Monroe St., City.

Subscribed and sworn to before me this 26th day of October, 1922.

[Seal]

C. E. MALLETTE,

Notary Public for the State of Washington, Residing in Spokane. [22]

AND AFTERWARD, on the 26th day of October, 1922, the same being the 39th day of the regular September, 1922, term of said court, court convened pursuant to adjournment—Present; Honorable FRANK H. RUDKIN, United States District Judge for the Eastern District of Washington, presiding.

Among the proceedings had were the following:

No. 3981.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CHARLES O. LINDER,

Defendant.

Sentence.

Now on this day into court comes the above-named defendant for sentence, and being informed by the Court of his conviction herein of record, he is asked by the Court if he has any legal cause to show why the judgment of this court should not now be pronounced in his case; he nothing says, save as he before hath said.

WHEREUPON it is now by the Court CONSIDERED and ADJUDGED that said defendant, now before the Court, be confined in the Spokane County Jail, State of Washington, or in such other prison as may be hereafter provided for the confinement of persons convicted of offenses against the laws of the United States, for the period of two months from this date, and to pay a fine of One

Thousand Dollars, to stand committed until he is duly discharged by law; and now the said defendant is committed to the custody of the Marshal of the United States for the Eastern District of Washington, who will carry this sentence into execution.

Filed in the U. S. District Court, Eastern District of Washington. Oct. 26, 1922. Alan G. Paine, Clerk. By A. P. Rumburg, Deputy. [23]

In the District Court of the United States for the Eastern District of Washington, Northern Division.

No. 3981.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DR. CHARLES O. LINDER,

Defendant.

**Motion for Order Overruling Motion to Quash
Search-Warrant.**

Comes now H. Sylvester Garvin, Assistant United States Attorney for the Eastern District of Washington, and moves the Court for an order overruling the plaintiff's motion to quash the search-warrant in the above-entitled case for the return of property seized and a suppression of evidence seized by A. E. Gatens, Federal Narcotic Agent, on the 1st day of April, 1922.

This motion is based upon the records of the United States Commissioner now on file in this

court and upon the affidavit of A. E. Gatens, hereto attached.

H. SYLVESTER GARVIN,
Assistant United States Attorney. [24]

Affidavit of Alfred E. Gatens.

United States of America,
Eastern District of Washington,—ss.

Alfred E. Gatens, being first duly sworn, upon oath deposes and says: That he is a Federal Narcotic Agent stationed at Spokane, Washington, in the Northern Division of the Eastern District of Washington; that he did enter and search the premises of Charles O. Linder in the Jamieson Building in the City of Spokane on April 1, 1922; that the said Charles O. Linder is a person registered under the Harrison Narcotic Act and that the affiant had the right to enter and examine all of the defendant's supply of narcotics and examine all of his records pertaining to narcotics; that the affiant had reason to believe and did believe that the said defendant was disposing of and dispensing narcotic drugs in violation of law and that he had been informed by certain persons that they had recently secured narcotics from the defendant above named in his office above described.

ALFRED E. GATENS.

Subscribed and sworn to before me this 1st day of May, A. D. 1922.

H. SYLVESTER GARVIN,
Notary Public in and for the State of Washington.

Filed in the U. S. Dist. Court, Eastern District of Washington. May 1, 1922. Alan G. Paine, Clerk. By A. P. Rumburg, Deputy. [25]

In the District Court of the United States for the Eastern District of Washington, Northern Division.

No. 3981.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DR. CHARLES O. LINDER,

Defendant.

Order Denying Motion for Directed Verdict, Denying Motion for New Trial and Arrest of Judgment and Fixing Supersedeas Bond at \$1500.

Now on this 26th day of October, 1922, motions in the above-entitled cause having been argued by counsel, and the Court being fully advised in the premises,—

IT IS HEREBY ORDERED that the motion for directed verdict be, and the same is hereby denied; the motion for new trial and arrest of judgment is hereby denied, and supersedeas bond is hereby fixed at fifteen hundred (\$1500.00) Dollars.

FRANK H. RUDKIN,

Judge. [26]

In the District Court of the United States for the
Eastern District of Washington, Northern Di-
vision.

No. 3981.

UNITED STATES,

Plaintiff,

vs.

CHARLES O. LINDER,

Defendant.

**Order Enlarging Time to Prepare and File Bill of
Exceptions.**

Upon application of defendant, it is hereby ordered that defendant shall have sixty (60) days, from the date hereof, in which to prepare and present his bill of exceptions in the above-entitled cause.

Dated at Spokane, Washington, this 16th day of October, 1922.

FRANK H. RUDKIN,

Judge.

Filed in the U. S. District Court, Eastern District of Washington. October 16, 1922. Alan G. Paine, Clerk. By A. P. Rumburg, Deputy. [27]

In the District Court of the United States, Eastern
District of Washington, Northern Division.

No. 3981.

THE UNITED STATES OF AMERICA,
Plaintiff,

vs.

CHARLES O. LINDER,
Defendant.

Bill of Exceptions (Original).

Before Honorable FRANK H. RUDKIN, District
Judge.

APPEARANCES:

For the Plaintiff:

F. R. JEFFREY, U. S. District Attorney.

H. SYLVESTER GARVIN, Asst. U. S. Dis-
trict Attorney.

For the Defendant:

Mr. W. H. PLUMMER.

Lodged in the U S. District Court November
21, 1922. Alan G. Paine. Eva M. Hardin, Deputy.
[28]

In the District Court of the United States, Eastern
District of Washington, Northern Division.

No. 3981.

THE UNITED STATES OF AMERICA,
Plaintiff,

vs.

CHARLES O. LINDER,
Defendant.

NOTICE.

To the Above-named Plaintiff, and to Messrs. F.
R. Jeffrey and H. Sylvester Garvin, Your At-
torneys:

You, and each of you, are hereby notified that the
above-named defendant has prepared and filed with
the clerk of the above-entitled court a proposed bill
of exceptions, a copy of which is herewith served
upon you.

You are further notified that said defendant will,
at the time said bill of exceptions is certified, ask
the Court to order attached and made a part of
said bill of exceptions all of the exhibits received or
offered in evidence on the trial, which are not al-
ready a part hereof.

Dated at Spokane, Washington, this 20th day of
November, A. D. 1922.

W. H. PLUMMER,
Attorney for Defendant.

Service of the above and foregoing notice and of
the bill of exceptions attached thereto, by true copy

thereof, is hereby acknowledged this 20th day of November, A. D. 1922.

H. SYLVESTER GARVIN,
Asst. U. S. District Attorney. [29]

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In the District Court of the United States, Eastern
District of Washington, Northern Division.

No. 3981.

THE UNITED STATES OF AMERICA,
Plaintiff,

vs.

DR. C. O. LINDER,
Defendant.

Before Honorable F. H. RUDKIN, District Judge.

APPEARANCES:

For the Plaintiff:

H. SYLVESTER GARVIN, Asst. U. S. Dis-
trict Atty.

For the Defendant:

W. H. PLUMMER, Esq.

BE IT REMEMBERED, That the above-entitled cause came on regularly for hearing in the above-entitled Court on Monday, October 9, 1922, at 10:00 o'clock, A. M., before the Hon. F. H. Rudkin, District Judge, the plaintiff appearing by H. Sylvester Garvin, Assistant United States District Attorney, and the defendant appearing in person and by his attorney, W. H. Plummer, Esq., thereupon the following proceedings were had and done, to wit:

THEREUPON a jury was duly empaneled and sworn to try the cause. [32—3]

Mr. GARVIN.—If the Court please, and Gentlemen of the Jury: The Government in this case ex-

pects to prove that about the 28th or 29th day of March, 1922, one Ida Casey, who was at that time addicted to the use of morphine, went up to the office of Dr. Linder, whose office is on the top floor of the Jamieson Building, over the Owl Drug Store, down here on Wall and Riverside, at one time went up there for the purpose of getting some sort of dope and at that time the Doctor injected a certain quantity of it into her arm. Then on another occasion, a day or so subsequent, that she went up and got another shot in the arm, and in addition the Doctor gave her a quantity of the drug, I think it was one small capsule at that time, to take out for herself, for her own use. On the third day, which was on the 1st day of April, the day the Doctor was arrested, the addict, Mrs. Casey, again went up to the Doctor's place and at that time came out with about four capsules, some containing cocaine and some containing morphine, and in payment for those she gave the Doctor a five dollar marked bill, which was taken off the Doctor at the time he was arrested. Briefly, upon those facts, the Government expects a verdict of guilty.

Mr. PLUMMER.—If your Honor please: Realizing that it is the custom of the defense to wait before he explains to the jury what he expects to prove, I am doing a little different in this case, I am going to tell you now what we shall prove.

We expect to prove, and the evidence will show, that Dr. Linder has lived in Spokane for a great many years, one of the most prominent physicians here. He belongs to a great many medical associa-

tions, and is really almost a national character in the medical profession, a man of standing in the [33—4] community; that he has offices here in the Jamieson Building, several offices, four or five; that in his office he makes it a practice to keep on hand almost a miniature drug-store. He does not do like a great many physicians do, give prescriptions out and have them go and buy it, he furnishes the medicine right in the office, and has done that way for years. He has been interviewed hundreds of times by addicts asking him to give them dope, and he absolutely refuses at all times and places to do anything of that kind. On account of the extreme activity on the part of certain narcotic officers, among whom is our distinguished friend, Mr. Gatens, trying to trap somebody and convict them, he goes and employs this old lady over here, this Ida Casey, who undoubtedly is an addict—I do not know, but I understand she is, I do not think there is any dispute about it,—to go up and try and trap Dr. Linder. She goes up there to Dr. Linder and she is a perfect stranger to him,—now this was on the 30th day of March, she made two visits, that is why I am discussing the dates. The first visit was on the 30th day of March. She went into his office and exhibited to him all of the ordinary symptoms which a person would exhibit if they had either ulcer or cancer of the stomach, and when she exhibited those symptoms to Dr. Linder, she told him that her regular physician was out of the city and she was suffering all of the pains that a person could suffer. He made an examination of her,

found out where the pain was and all about it, and which she readily told him. Whether she had the pain or not, I do not know, but she told him she had them anyhow. He examined her and gave her just a temporary treatment in the shape of morphine, which we will show by other reputable physicians in this city is the proper [34—5] treatment, under the diagnosis and under her statement as to what she suffered. The next day she—well, I am getting ahead of my story. The evidence will show that after she had been there on the 30th, and had got this morphine from Dr. Linder, which was an ordinary dose, not a large dose, for temporary relief until her physician got back, telling her at that time, "I do not want to treat you, I cannot butt in on your doctor," she insisted on him treating her and he did. She had been sent there by Gatens over here, and she reported to Gatens that Dr. Linder gave her some of this morphine. I think the evidence will show that they thought that would not be sufficient to cause Dr. Linder's arrest. I think the evidence will be introduced that they thought they could not secure a conviction on the strength of that, so they gave her a five dollar bill, which they either marked or took the number of, I do not know how they identified it, and sent her up there again on the 1st day of April. That would be the second day as there are thirty-one days in March. The 1st of April she comes up there again, with the same pain and same story. Dr. Linder examined her again, which we will show, made an absolute physical examination, and asked

questions, and told her then that he wished she would wait until her own doctor came back, but she insisted on an immediate treatment because she said she was a trained nurse and had to do her work, and he gave her another dose and a couple of small tablets for temporary relief until her own doctor returned. He charged her, I think the evidence will show, five dollars for the examination part, and she gave him this marked five dollar bill, and he put it in his pocket. She went out and afterward she made some report to [35—6] Mr. Gatens, and they all rushed into Dr. Linder's office, Keenan, Aikers, Gatens and the whole gang rushed in there, at a time when Dr. Linder—four o'clock on the afternoon of Saturday, Saturday afternoon at four o'clock, when they threw him in jail and kept him there over Sunday. His office had been there for years and years, and they could always find Dr. Linder, and they rushed in there, showed a star, took charge of the office, and at that time there was a woman stripped, practically, on the examination table, a respectable citizen of this community, and stripped, but nevertheless they rushed in there, put Dr. Linder under arrest, rifled his place from one end to the other, almost broke into his safe, examined everything there, and accused him of everything in a loud voice, this fellow Gatens leading the whole proposition,—Peyton did not do anything, just followed the crowd,—exhibited a star, without any legal search-warrant, although they pretended to have a search-warrant, went in there and grabbed him and stuck him down in jail and kept him there

until seven o'clock that night, without any chance to see his lawyer or give bond or anything else, and that is the charge they brought against him, selling narcotics.

We expect to show you that under the circulars and authority issued by the Government, which I will offer in evidence, and I do not think the other side will refuse to accept it—anyhow, by reason of the regulations covering what doctors have a right to do and should do under the Harrison narcotic act, that all doctors are instructed that they have a right, and it is their duty, in cases of this kind as I have illustrated to you, the symptoms and treatment, they have a right to give these doses that Dr. Linder did give this woman, [36—7] and he acted in good faith. I think the Court will instruct you that the law and regulations of the department show that anything Dr. Linder did in good faith would justify nobody in believing that he was peddling narcotics.

The COURT.—Call your witnesses. [37—8]

Testimony of Ida Casey, for the Government.

IDA CASEY, called as a witness by the United States, being first duly sworn, testified in its behalf as follows:

Direct Examination.

(By Mr. GARVIN.)

Q. What is your full name?

A. Ida Casey; Mrs. Ida Casey.

Q. How long have you lived at Spokane?

A. Twenty-two years.

(Testimony of Ida Casey.)

Q. And where are you living at the present time, Mrs. Casey.

A. I am living out on the ranch.

Q. How far from town?

A. About twenty-two miles. I have been in town for three weeks, though.

Q. Mrs. Casey, you were addicted to the use of morphine, were you? A. I were, yes.

Q. For how many years, Mrs. Casey?

A. A long time.

Q. And have you recently taken the cure?

A. Yes, sir.

Q. Where did you take that at, Mrs. Casey?

A. The city jail.

Q. Here in the city of Spokane?

A. Yes, sir, here in the city of Spokane.

Q. I am going to ask you, Mrs. Casey, how many years did you say you had been addicted to the use of it?

A. Quite a little while. Probably ten years off and on.

Q. Are you acquainted with Dr. Linder, the defendant in this case? A. Yes, sir.

Q. Do you know where his offices are?

A. Yes, sir.

Q. Where are they? A. Paulsen Building.

[38—9]

Q. What building?

A. Paulsen, isn't it? Jamieson.

Q. I did not get that? A. Jamieson.

Q. And are you acquainted with the Doctor?

(Testimony of Ida Casey.)

A. Slightly.

Q. Have you ever had occasion to go up to his office? A. I have.

Q. When was that? A. Last March.

Q. Just relate to this jury the circumstances under which you went up to the Doctor's office in the Jamieson Building, and what you did up there at that time, Mrs. Casey. Will you kindly face the jury, so they can hear you.

A. Well, I went up there because I was sick. I was a drug addict.

Q. Will you speak a little bit louder.

A. And I understood that he would—

Mr. PLUMMER.—Just a minute. We object to what she understood.

Mr. GARVIN.—Q. What I want you to tell, is to tell about going up there and what you did, and what conversation you had with the Doctor, if anything. Just what took place up there?

A. I told him I was a drug addict, and I wanted drugs, I was sick.

Q. And what did he do then, Mrs. Casey?

A. That is all. I paid him and went out, and I told him I would have to be back again, because I was an addict, so I came back.

Q. Did you have any further conversation with him then?

A. No, I did not have much conversation.

Q. That was the first time you went up?

A. Yes, sir.

Q. Did you get any drugs at that time?

(Testimony of Ida Casey.)

A. No, sir; I did not. [39—10]

Q. Did he administer any shots?

A. Oh, yes, he gave me the hypodermic.

Q. The hypodermic at that time? A. Yes, sir.

Q. And then when did you come back again?

A. The next day, I think.

Q. I see. Now, what took place there the next day? A. The same thing.

Q. And did you get anything in addition to that there?

A. Yes, I think I got some tablets in a bottle.

Q. And then subsequent to that, did you go up again? A. Yes, sir, I went the third time.

Q. And what did you get on the third time?

A. That was the time I got the bottle. That was the third time that I got the four capsules.

Q. Now, what did you pay the doctor on those occasions, Mrs. Casey?

A. Two dollars and five dollars.

Q. You paid him two dollars the first time you got a tablet and five dollars the last time, is that correct? A. Yes, sir.

Q. At the time you went up into the Doctor's office, did the Doctor make any examination of your body?

A. Of my arm, he could see I was an addict by my arm.

Q. What was the condition of your arm at that time, Mrs. Casey?

A. Well, needle marks; I was in pretty bad shape.

(Testimony of Ida Casey.)

Q. Did he make any other examination of any other portion of your body?

A. No, sir; he did not.

Q. About how long were you up there in the office on the first time you went?

A. I had to wait quite a little while? I forget now.

Q. Did you state to the Doctor on your first or second or [40—11] third visit, that you were sick and that you either had an ulcerous or cancerous condition? A. I cannot remember that.

Q. Did you have any discussion with the Doctor there about your physician being out of town?

A. I might have told him that. My peddler was out of town, the dope peddler; I might have called him a physician, but my dope peddler was out of town.

Q. Did you tell him you were taking treatments from a doctor who was prescribing dope to you?

A. No, sir.

Q. Did you have any such conversation with him? A. No, sir; I did not.

Q. Now, the time that the Doctor gave you the—that is, the tablets, what were they contained in, Mrs. Casey? I do not mean the ones now you got the hypodermics, but the other ones, you took out of the office. A. What were they what?

Q. What did he give them to you in?

A. In a bottle.

Q. In a bottle?

(Testimony of Ida Casey.)

A. Both times, and one in a package the last time.

Q. Fifteen or sixteen the last time, in a package, you say?

A. No, one in a bottle, and one in a package. I cannot tell you the difference.

Q. I am going to ask you—

A. That is the first one.

Q. And this?

A. I know there was one in a bottle and one in a package. I did not see it.

Mr. PLUMMER.—She said first the bottle.

The WITNESS.—I see that package. I cannot tell that morphine from cocaine. [41—12]

Mr. GARVIN.—Q. That is the one that is wrapped up in there? A. I cannot tell.

Q. When you came out of the office on that occasion, is this— A. That is the bottle.

Q. When did you turn it over to Mr. Gatens?

A. As I came out of the office.

Q. Right away; you did not have an opportunity to make an examination—did you make any examination of what was in the package?

A. No. He handed it to me and I could not tell the morphine from the cocaine, just what I had the two. I never saw the cocaine in grains.

Q. Mrs. Casey, how many visits did you make to the doctor's office altogether?

A. I could not say whether it was three or four.

Q. Did you pay him anything the first time you went up? A. Oh, yes.

(Testimony of Ida Casey.)

Q. What did you pay him? How much? Do you recall?

A. I could not tell. It was either a dollar or two dollars, I could not say, but he only gave me the shot that time.

Q. That was the time you got the hypodermic injection in the arm? A. Yes, sir.

Q. The second time, do you recall what you paid him?

A. I think it was the second time two dollars; he gave me the pills.

Q. And then the third time?

A. That was five dollars.

Q. That was the time you got the three pills?

A. Yes, sir.

Q. When was the first time you met Mr. Gatens, Mrs. Casey? A. That very day. [42—13]

Q. That was which day?

A. The day they gave me the five dollars.

Q. That was the 1st of April?

A. Yes, sir, that was the first of April.

Q. Had you met him prior to that time?

A. No, sir. I never have since.

Q. Did you have any discussion with him about going up to try to make any purchases from the doctor? A. No, sir.

Mr. GARVIN.—I am going to move to offer this for identification.

The COURT.—I understood that the one that the package was in was the one she got the third time; she did not know what was in it.

(Testimony of Ida Casey.)

Mr. PLUMMER.—That was a package instead of a bottle.

Mr. GARVIN.—No, it is a bottle, but there is a package with it. There are two; I cannot tell one from the other.

The COURT.—They may be marked for identification.

(Thereupon said bottles were marked Plaintiff's Exhibits Nos. 1 and 2 for Identification.)

Mr. GARVIN.—That is all.

Cross-examination.

(By Mr. PLUMMER.)

Q. Mrs. Casey, I believe he addressed you as Mrs. Casey; are you a married lady? A. Yes, sir.

Q. Where is your husband?

A. Over in Idaho.

Q. Beg your pardon? A. Over in Idaho.

Q. Where are you living now?

A. I am in town.

Q. Whereabouts in town?

A. The Model Hotel.

Q. What is your business? [43—14]

A. I have been out on the ranch, but I came in for this occasion.

Q. How long since you were out on the ranch?

A. I came in about Fair week; three or four weeks ago.

Q. You have been here ever since?

A. Yes, sir.

Q. Did you come here during Fair week for this trial? A. Yes, sir.

(Testimony of Ida Casey.)

Q. Who told you to come in? A. No one.

Q. You just came in and have been living in town ever since? A. Yes, sir.

Q. How do you make your living?

A. My husband sends me money.

Q. And keeps you there at the hotel?

A. Yes, sir.

Q. Who told you to come in during Fair week, and stay here for this trial?

A. No one. I just came in. I was not feeling well, and took a job there.

Q. Who told you when the case would be called for trial, Mrs. Casey?

A. About two weeks ago, I guess.

Q. How long had you been in town then?

A. Since Fair week.

Q. You stayed here during Fair week and then about two weeks ago they told you the case would be for trial and you just stayed in here?

A. Yes, sir.

Q. How long have you known Dr. Linder before you went up to his office?

A. I had never seen him.

Q. You went up there the first time and told him that your physician was out of town and you wanted him to treat you?

A. I suppose that is right.

Q. And he took you into his private office, didn't he? [44—15]

A. Yes, sir.

Q. And he examined you, that is, he felt your

(Testimony of Ida Casey.)

pulse and listened to your heart beat and all those things a Doctor does, you understand that?

A. Yes, sir.

Q. He done all that, and you told him about the pains you had in the abdomen?

A. No, I had no pains, only a drug addict.

Q. I am asking you what you told him. You told him about the pains that you were suffering, didn't you?

A. I was suffering pain, but it was a habit.

Q. I am not asking you what it was, I am asking you what you told him you were suffering from, not what you had. I know you did not have what you claimed you had, but I am asking you what you told him.

A. I did not tell him.

Q. What pains did you tell him you had?

A. I did not tell him of no pain whatever.

Q. Never did tell him of anything?

A. No, sir; whatever.

Q. And when you told him you were suffering from the drug habit, and your Doctor was out of town, he just took a hypodermic needle and gave you a shot in the arm?

A. Not necessarily that.

Q. Was that true?

A. He shot me in the arm and I paid him and I went.

Q. He shot you in the arm and you paid him and went?

A. That is all.

Q. That was about the 30th day of March, wasn't it? I think that is what is mentioned in the indictment.

(Testimony of Ida Casey.)

A. I could not tell you the dates. [45—16]

Q. About that time? A. I suppose.

Q. When did you first meet Gatens?

A. I never met Mr. Gatens until the day they gave me them five dollars, that was the first of April.

Q. What time of day was it when you met him on that day?

A. Why, near three o'clock. I do not know what time it was. Just a few moments before we went up there.

Q. And he told you he wanted you to take that five dollars and go up there to Dr. Linder's office and get some dope and pay him some money, and when you had done that he would appear?

A. I did not know what they were going to do. I simply took the money and handed it over.

Q. Where did you first meet them?

A. In the car.

Q. In what car? A. Mr. Gatens's car.

Q. How did you happen to get in Mr. Gatens's car?

A. There was a third party brought me over there.

Q. Who is that? A. Mr. Brown.

Q. Who is Brown?

A. Charley Brown, the man that introduced me to Mr. Gatens.

Q. The man that introduced you to Mr. Gatens?

A. Mr. Peyton and the other officers.

(Testimony of Ida Casey.)

Q. That was on the 1st of April, when you paid the five dollars?

A. Yes, sir; that was the first time I ever seen any of them.

Q. Who gave you the five dollars?

A. Mr. Gatens.

Q. And asked you to go up there and see if you could not trap the Doctor?

A. They did not say anything about trapping him.

Q. I mean to buy this stuff?

A. Yes, sir. [46—17]

Q. You knew you were supposed to go up there and try to induce the Doctor to give you some dope and pay him the five dollars and then go out and report it to Gatens and his crowd, you knew that was what you were expected to do?

A. I was to come in and get my dope that day.

Mr. GARVIN.—I have no objection to the question in substance but I do object to the language in it.

Mr. PLUMMER.—Don't be finicky.

Mr. GARVIN.—You are drawing a conclusion and asking the witness to testify to it.

Mr. PLUMMER.—It is cross-examination.

The COURT.—He can ask her as to what her agreement was.

Mr. PLUMMER.—That is practically what I was doing.

Q. That was the understanding between you and Gatens, when he gave you this five dollars, that you

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testimony of Ida Casey.)

Q. To go up there on behalf of Mr. Gatens and
own or whoever got you to do this work, and
induce the Doctor to give you some dope of some
kind and pay him the five dollars?

A. I had made a date with the Doctor.

Q. Wait until I get through, I want to be fair
to you. You would give the Doctor the five dollars
and then report to Mr. Gatens afterwards what
he had done; now, that was the arrangement you
made with Gatens, wasn't it?

A. I had made no arrangements with Gatens
before.

Q. How did you happen to go up there?

A. Mr. Brown introduced me and sent me up but
I never spoke to Mr. Gatens until afterwards.

Q. After Mr. Brown introduced you to Gatens,
he gave you the five dollars? A. Yes, sir.

Q. What did he say to you after he gave you the
[47—18] dollars. A. Nothing; just followed
him up there.

Q. Who was it told you to go up there?

A. Mr. Brown.

Q. Brown was working under Gatens?

A. Yes, sir.

Q. Brown told you to go up there and induce
the Doctor, if you could to induce the Doctor to give
you some dope? A. I had a date with him.

Q. Listen; will you answer my question. Brown
told you to go up to Dr. Linder's office?

A. Yes, sir.

Q. And by the use of this five dollars—

(Testimony of Ida Casey.)

A. Yes, sir.

Q. —try and get the Doctor to give you some dope? A. Yes, sir.

Q. Try and get the Doctor to give you some dope for yourself? A. Yes, sir.

Q. When the deal was made, to afterwards come out and report what you had done? A. Yes, sir.

Q. And when you went up to Dr. Linder's office on the 1st day of April, you went into his private office, didn't you? A. Yes, sir.

Q. Was there anybody else in the reception room, waiting there, when you went through?

A. No, sir.

Q. Was there any when you came out?

A. No, sir.

Q. Did you see anybody in the office at all?

A. The office girl.

Q. Was that Mrs. Westfall, the lady sitting over here? A. I could not tell you.

Q. You could not tell? A. No.

Q. Well, you are not an addict now, are you?
[48—19] A. No, sir; I am not.

Q. You are perfectly rational now?

A. Yes, sir.

Q. You have been cured and you are all right?

A. You bet I am.

Q. The medicine that the Doctor gave you was in an envelope similar to the one that I hand you now, and with some writing, maybe not the same writing that is on this one, but writing on it, and printing on it?

(Testimony of Ida Casey.)

A. He handed me no envelope. He handed it to me in a bottle.

Q. You say he did not hand you anything at all in an envelope of that kind? A. He did not.

Q. At any time? A. At any time.

Q. I show you Plaintiff's Exhibit 1, was that the bottle he gave you the first time or the second time?

A. That was the first time.

Q. And that is the contents that was in it?

A. Yes, sir.

Q. Just the same as it appears there?

A. Yes, sir.

Mr. PLUMMER.—Will the jury look at that terrible dose of morphine.

Q. And when you went up there on the 1st of April, this was the bottle he gave you on that day, which has two or three little tablets in there, I believe, was it, that is marked?

A. I do not know about that.

Q. You saw it, that is Plaintiff's Exhibit No. 2?

A. That is the one; it looks like it.

Q. Just the same tablets and everything else?

A. Yes, sir. I do not know what that paper is.

Q. I do not either. What is this?

A. That is cocaine that is supposed to be wrapped up in the [49—20] paper.

Q. How do you know?

A. Because he told me so.

Q. Who told you so? A. Dr. Linder.

Q. That is in that paper now?

A. I do not know.

(Testimony of Ida Casey.)

Mr. PLUMMER.—I move to strike that out as to what is in the paper as the opinion of the witness.

The COURT.—I sustain the objection.

Mr. PLUMMER.—Q. What was Brown to pay you for all these services you were rendering for them? A. Do I have to answer that question?

Q. Yes, sir; you have to answer it.

A. He was not paying me anything.

Q. What were you afraid to answer it for?

A. Just because you were asking such a question.

Q. You would tell this jury you were not to be paid anything by anyone for going up there, acting as a stool-pigeon, trying to catch a doctor who had accommodated you previously, and nobody had offered you any inducement or any pay or any reward, you tell this jury, do you? A. Yes, sir.

Q. Did these officers have anything on you?

A. Yes.

Q. What was your reason in trapping Dr. Linder, as long as he had accommodated you, as you claim before this jury, in giving you a shot in the arm when you needed it?

A. I did not think he was doing right.

Q. You did not think he was doing right?

A. I did it for a good cause; that is why I stool-pigeoned.

Q. You had not reformed at that time?

A. No, but I did shortly.

Q. You, then, want this jury to believe you had been an [50—21] addict for years, went up and caused the doctor to give you a shot in the arm, and

(Testimony of Ida Casey.)

then in the interest of society you went ahead and acted as a stool-pigeon to try to trap the Doctor, you want the jury to believe that, do you?

A. That is what they call it.

Q. You tell this jury, do you, that you told Dr. Linder you were an addict, that he knew you were addicted to the use of these drugs, and that you went and asked him for this small dose of morphine on account of the habit? A. Yes, sir; I did.

Q. Have you seen Dr. Linder since you saw him in the office that time? A. No, sir.

Q. You had not seen him at all? A. No, sir.

Q. You are sure about that? A. Yes.

Q. Positive of it? A. How is that?

A. I say you are positive you have not seen Dr. Linder since you saw him in the office on April 1st? A. Yes, sir.

Mr. GARVIN.—If the Court please, the witness may not understand.

The COURT.—She saw him in the courtroom this morning.

Mr. PLUMMER.—I am not speaking of seeing him in the courtroom now.

Q. You tell this jury, then, so we won't make any mistake, I do not want to try to trap you, I want you to be honest—you tell this jury now that you have not seen Dr. Linder to speak to him or had any conversation with him or in his presence about this matter at all, since you left his office on April 1st, this year? A. Yes, sir.

Q. That is true, is it?

(Testimony of Ida Casey.)

A. Yes, sir; that is the case, that is true. I do not remember it, if I did. [51—22]

Q. Well, your memory is apparently good as to everything that occurred on April 1st and March 31st, isn't it?

The COURT.—Don't argue with the witness.

Mr. PLUMMER.—Is Mr. William Peper here? Please stand up.

Q. Just look at this gentleman.

A. I never seen him.

Q. Just two or three I want you to identify while you are on the stand.

Mr. PLUMMER.—Is Mr. S. M. Brown in the room?

Q. Just notice this gentleman.

A. Yes. I do not remember that gentleman.

Q. Just a moment, I will give you the question in a minute. Do you know Mr. Stijer? Is he in the courtroom? He will be here a little later. He is a salesman here for Culbertson-Grote-Rankin, I think. I will ask you if you had a conversation with Dr. Linder on August 22d, 1922, at about six o'clock in the afternoon of that day?

A. I do not remember.

Q. Wait a minute until I get through, don't be in a hurry, just wait until I get through with my question. —in the Model Hotel of this city, Dr. Linder, Mr. Stijer, and Mr. Brown, being present, having been taken up there by Dr. Linder, at which time—and the visit was made on account of you asking Dr. Linder to come up and see you, and he

(Testimony of Ida Casey.)

called on you on that day at the Model Hotel, took these two men with him, and at that time and place if you did not say in substance as follows: Listen to what I am going to read.

A. I did not.

Q. Referring to this case, that you said without being asked to say anything, that you volunteered, yourself, this [52—23] statement: "I did him wrong, meaning Dr. Linder, I did him wrong. I will tell Judge Hurn"—thinking that Judge Hurn was on the bench and would try the case—"I will tell Judge Hurn they used me as a damn stool-pigeon. I was an addict but the doctor did not know it, as I did not tell him. I did him wrong, I swear to God I did him wrong, but I will shoot straight hereafter, that is all I can do. Will you shake hands with me and forgive me," at that time turning to the Doctor and asking him to shake hands; that afterwards you broke down and cried, didn't you? Will you answer my question, and that you broke down and cried, and after you had recovered your composure you practically repeated what you said before. I will ask you if you did not have such a conversation with Dr. Linder in the Model Hotel in this city? A. No, sir.

Q. Before those three people? A. I was in—

Q. Answer my question. A. What was it?

The COURT.—Answer the question yes or no.

A. Yes, I did.

Mr. PLUMMER.—And what statement you made

(Testimony of Ida Casey.)

at that time was true, as you thought at that time, wasn't it? A. At that time, I suppose.

Q. When did you change your mind?

A. I never did change my mind.

Q. Well, could they be true then and it would not be true now?

A. I do not know. I was intoxicated, under the influence of liquor at that time.

Q. Who furnished you liquor?

A. I do not know.

Q. You do not know who furnished you liquor?

[53—24] A. No, sir; I do not.

Q. Gatens furnish it to you?

A. No, sir; he did not.

Q. Now, you admit to this jury you made those statements, that you thought they were true at the time you made them? A. I suppose.

Q. But you do not think they were true now because at that time you might have been under the influence of liquor?

A. I do. I do not remember making them.

Q. How is that?

A. I do not remember making them.

Q. Well, you said a moment ago you had made that statement. Now, you say you do not remember it. Which statement are you going to stick to?

Mr. GARVIN.—I object to arguing with the witness.

Mr. PLUMMER.—She said she might have been under the influence of liquor. She did not say she was, she says she might have been.

(Testimony of Ida Casey.)

The WITNESS.—I was under the influence of liquor at the time.

Q. What did you send for Dr. Linder for?

A. I do not know.

Q. You do not know?

A. I could not tell you that.

Q. When did you reform from this drug habit? You say you have reformed and become cured?

A. I went to the city jail on the 12th of April and I was there for fifty-seven days.

Q. When did you get out?

A. Fifty-seven days from the 12th of April.

Q. Then you were out? A. Yes, sir.

Q. Then you were cured?

A. Yes, sir; perfectly cured and I am cured now.
[54—25]

Q. Then on the 22d of August you were cured, weren't you? A. The 22d of August?

Q. The 22d of August, when this talk was had in your own room.

A. I was perfectly cured, but I was under the influence of liquor. I had been sick.

Q. Well, here just a few days ago you sent for Dr. Linder to come up and see you, didn't you?

A. No, sir; I did not.

Q. Didn't you send—didn't you call up Dr. Linder, about a week or so ago?

A. No, sir; I did not.

Q. Wait a moment now. A week or so ago, and say that you would send your daughter up to his office? A. I have no daughter. No, I did not.

(Testimony of Ida Casey.)

Q. Well, I do not know as you have. I am asking you what you said? A. No, sir; I did not.

Q. I am asking you as to what you said to him.

A. No, sir; I did not.

Q. Nothing of that kind?

A. No, sir. I have no daughter and never thought of it.

Q. I am not asking you whether you have a daughter or not. A. No, I did not.

Q. I am asking you what you said, that is all.

A. I did not.

Q. Did you, when you came out of the office on April 30th, that you claim that he gave you this stuff in a package and also in the bottle, did you give any of that stuff to Mr. Gatens after you came out? A. I did, sir.

Q. The bottle and the paper both?

A. Yes, sir; the whole thing.

Q. Where did you go after you came out of Dr. Linder's office, and after they all rushed in there and raided his office? [55—26]

A. I went straight to the hotel.

Q. You went straight to the hotel, you were not in jail yet? A. No, sir.

Q. Had you been in jail? A. No, sir.

Q. What hotel did you go to?

A. I was up at the Palace Hotel at that time.

Q. The Palace Hotel? A. Yes, sir.

Q. Was Mr. Gatens or any of the people interested in this prosecution keepng you up there?

A. No, sir; they did not.

(Testimony of Ida Casey.)

Q. Did they know where you went?

A. No, sir.

Q. Have you seen either one since that time?

A. I see them in the spring.

Q. I mean since they raided Dr. Linder's office?

A. No, sir.

Q. Haven't talked to anyone? A. No, sir.

Q. And they have not talked to you?

A. No, sir.

Q. At no time or place? A. No, sir.

Q. You are sure about that?

A. No, sir; not since.

Mr. PLUMMER.—That is all.

Redirect Examination.

(By Mr. GARVIN.)

Q. Mrs. Casey, do you recall the conversation you had with Dr. Linder, Mr. Stijer and Mr. Brown up in the hotel on the 22d day of August?

A. I cannot recall it much.

Q. Do you recall the circumstances under which that meeting was held? A. I cannot do it.

Q. Do you recall sending for Dr. Linder?

A. I cannot say.

Q. Did you sign any statement up there at that time? A. No, sir, I did not. [56—27]

Q. Do you know how they happened to come to your room? A. No, sir.

Q. Do you recall what your condition was at that time?

A. I was under the influence of liquor.

(Testimony of Ida Casey.)

Q. Do you recall the incident? Do you recall them being up in your room?

A. Yes, I do, kind of. I recall that gentleman over there the most of any.

Q. Which one is that?

A. I do not know his name.

Q. Do you know how they happened to come up there?

A. I do not. I may have sent for them, I do not know.

Q. Have you any recollection of sending for them? A. No, I have not.

Mr. GARVIN.—That is all.

Mr. PLUMMER.—That is all.

Witness excused. [57—28]

Testimony of Alfred E. Gatens, for the Government.

ALFRED E. GATENS, called as a witness by the United States, being first duly sworn, testified in its behalf as follows:

Direct Examination.

(By Mr. GARVIN.)

Q. Will you state your full name.

A. Alfred E. Gatens.

Q. And what are your duties, Mr. Gatens?

A. Internal Revenue Narcotic Inspector.

Q. Were you present on the 1st day of April, 1922, up in the Jamieson Building, when Mrs. Ida Casey came out of Dr. Linder's office? A. Yes.

Q. I will ask you to take a look at these, please,

(Testimony of Alfred E. Gatens.)

Exhibits 1 and 2 of the plaintiff, and state where you first received them?

A. This one was handed to me some days afterward by Mr. Peyton.

Q. I see.

A. This one containing three tablets and the yellow paper package stuck down inside was handed me by the informer, Ida Casey.

Q. What do they contain?

Mr. PLUMMER.—Just a moment.

Mr. GARVIN.—Q. Mr. Gatens, have you had—

The COURT.—He has qualified a good many times here.

Mr. PLUMMER.—I have never cross-examined him on that qualification.

Mr. GARVIN.—Q. Mr. Gatens, what experience, if any, have you had in the use of drugs, that is, the analyzation of their properties?

A. I have been through organic and inorganic chemistry, materia medica and therapeutics. [58—29]

Q. Are you competent to make an examination?

A. I am.

Q. Have you had any considerable experience in making an examination? A. I have.

Q. What schools, if any, did you attend?

A. The University of Tennessee Medical.

Q. Have you practiced medicine at any time?

A. I have practiced on special commission in Mexico.

(Testimony of Alfred E. Gatens.)

Q. Did you make an examination of that bottle to see what the contents were? A. I did.

Q. Will you state to this jury what it contains?

A. Three tablets of cocaine and one of morphine.

Q. Which one contains the morphine?

A. The one in yellow.

Q. Did you make an examination of this one?

A. Contains morphine.

Q. That is Plaintiff's Exhibit 1.

Mr. PLUMMER.—That is the one with the one tablet in?

Mr. GARVIN.—Yes, sir.

Q. What did you then do, Mr. Gatens, after you were handed Plaintiff's Exhibit No. 2 at that time in the hall of the Jamieson Building?

A. I went into Dr. Linder's office, accompanied by—

Q. Then what took place in there?

A. After waiting a few moments, some person who seemed to be in a hurry spoke to the girl and the girl said she would get Dr. Linder if he could not wait. I spoke up and said that I was in a hurry too. He came to the door and I introduced myself, showed him the search-warrant, and explained my mission there. On entering his office, I requested that he show me what paper [59—30] money he had on hand. Among his paper money when he handed it to me, I found the five dollar bill we had previously taken the serial number of. I then delivered a sort of lecture to Dr. Linder.

Q. Just state the substance of it.

(Testimony of Alfred E. Gatens.)

A. I do not know the exact words, but I think I said, "You know, you should know, you have not got any right to sell dope to dope addicts," or words to that effect, I do not remember word for word, but at any rate I asked him to show all of the narcotics he had on hand, I wanted to check them. He went into his medicine case and brought out a box, I think containing several vials of different dosages of morphine compounded with other drugs, but no cocaine. I asked the doctor to give me the rest of his narcotic supply. He stoutly maintained on several occasions that that was the entire supply. I asked him about cocaine. He said he had none at all. He repeatedly stated he had no cocaine at all. I think then I told him he might just as well give me the rest of his dope supply, because I was going to search until I found it. I got no further satisfaction from the doctor, except he was walking up and down. I had the idea he was trying to get away for some reason, so I stayed with him.

Mr. PLUMMER.—What is the last?

The WITNESS.—I had an idea—

Mr. PLUMMER.—I move to strike that out as not responsive and simply an opinion of the witness.

The COURT.—Yes, sir, the answer is stricken; the jury will disregard it.

A. We then proceeded to make search and, up in one of the front, inner room, facing the street, Mr. Aikers found a drawer [60—31] pulled out

(Testimony of Alfred E. Gatens.)

completely and laid on a chair, and in that we found some bottles containing cocaine.

Q. Were you with Mr. Aikers at that time?

A. I was. Containing different dosages of cocaine.

Q. I am going to ask you to look at these packages and state where they came from?

A. These came from the drawer.

Q. That is the drawer where you found the cocaine? A. Yes, sir.

Q. Are any of those vials filled?

A. These are empties.

Q. What kind of vials are they?

Mr. PLUMMER.—Just a moment. The jury can see what kind of vials they are.

A. They are all labeled.

Mr. GARVIN.—Q. I am going to ask you to look at this package here. A. These are the vials containing cocaine and morphine that we found in the drawer, after the Doctor had maintained that he had no cocaine at all.

Q. Now how many of these vials contain cocaine?

A. This one does—two—three—

Q. Well, are they all correctly marked? What I am trying to get at, if they are marked cocaine, is that what they contain?

A. The ones marked cocaine contain cocaine.

Q. Then they can speak for themselves. How about this box, Mr. Gatens?

A. This is the box handed me by the Doctor at my request out of his medicine case, and which

(Testimony of Alfred E. Gatens.)

he purported to have been the entire narcotic supply on hand, and at that time he denied having any cocaine in his office.

Mr. GARVIN.—Now, if the Court please, we are going to offer [61—32] this one as Exhibit No. 3 on behalf of the Government. That is the one that the Doctor handed over.

(Thereupon a box of vials was received in evidence as Plaintiff's Exhibit No. 3, admitted and is made a part hereof.)

Mr. GARVIN.—And we are going to offer this one as No. 4, the one that Officer Aikers and Gatens found.

(Thereupon a box of vials was received in evidence as Plaintiff's Exhibit No. 4, admitted, and is made a part hereof.)

Mr. GARVIN.—And this one as No. 5.

The WITNESS.—Found also in the drawer.

Mr. GARVIN.—Also in the drawer.

(Thereupon a box of empty vials was received in evidence as Plaintiff's Exhibit No. 5, and is made a part hereof.)

Mr. GARVIN.—Q. Now, Mr. Gatens, have you made an examination of the contents of all of those different vials?

A. No, sir; some of them I am not interested in.

Q. I mean the ones containing narcotics, that are labeled narcotics? A. I made a test, yes.

Mr. PLUMMER.—What is that?

The WITNESS.—I made a test of it.

Mr. GARVIN.—I am going to ask—

(Testimony of Alfred E. Gatens.)

The COURT.—That is admitted.

Mr. GARVIN.—I offer the five dollar bill as No. 6.

Mr. PLUMMER.—No objection.

(Thereupon said five dollar bill was received in evidence as Plaintiff's Exhibit No. 6, admitted, and is attached hereto and made a part hereof.)

Mr. GARVIN.—Q. Did you make an examination at that time of the doctor's records to see whether or not he had entered in his order forms— [62—33]

A. He had none. I asked the Doctor for all his records.

Mr. PLUMMER.—Just a moment. We object to his testifying as to the contents of any document. We have the record in court and will let them have it.

Mr. GARVIN.—I have not asked in reference to records.

A. I demanded to be shown all of the records. The doctor handed me his order form blanks, Government order forms, and on my request stated that was all he had. If he had other records, I supposed he would give them to me.

Q. Did you then look for any other records in additon to those that he voluntarily gave you?

A. No, sir. If the record is not produced at our demand—

Mr. PLUMMER.—I object to that as not responsive to the question at all.

The COURT.—Sustained.

(Testimony of Alfred E. Gatens.)

Mr. GARVIN.—That is all.

Cross-examination.

(By Mr. PLUMMER.)

Q. I believe your title is United States Revenue Narcotic Inspector? A. Internal Revenue.

Q. Internal Revenue Narcotic Inspector?

A. Yes.

Q. How long have you been engaged as an inspector? A. Since February, 1920.

Q. 1920? A. Yes.

Q. You were raised in Memphis, Tennessee, weren't you? A. How is that?

Q. You were raised in Memphis, Tennessee?

A. Born and educated there.

Q. You worked for the railroad for some years, didn't you? [63—34] A. No.

Q. Never worked for the railroad?

A. Yes, as cotton clerk.

Q. As cotton clerk? A. Yes, sir.

Q. I do not know what that is, what is a cotton clerk? A. Freight clerk, handling cotton.

Q. That was with the Texas-Pacific road, was it? A. It is not the Texas-Pacific road.

Q. What road was it?

A. Frisco and the I. C.

Q. Up to what time did you work for the railroad service?

A. Oh, I have never worked for any railroad more than altogether a year, year and a half for any railroad or all.

(Testimony of Alfred E. Gatens.)

Q. What did you do after you got through working? A. I never did quit working.

Q. I am speaking—you said you were a cotton clerk; I do not know what you mean by that, but connected with the railroad transportation, I am speaking of, what did you do after that?

A. I do not understand what you mean. You ask me what you want, I will answer it.

Q. When you got through your school, what did you work at? A. I learned the electrician's trade.

Q. Did you work at it? A. I did.

Q. Who for? A. Brown & Boram.

Q. Where? A. The principal contractors in Memphis.

Q. And how long did you work for them?

A. I learned the trade.

Q. And when you got through working for them, what did you do after that?

A. I took some work myself.

Q. What kind of work? A. Electrical. [64—35]

Q. You were in the electrical business, we will say then, electrical work, for how many years?

A. Not many. I did not have to work at all unless I wanted to.

Q. I just want to know what you did do?

A. Not a considerable time.

Q. How long? A. I do not remember.

Q. Give some estimate. A. Not a year.

Q. What did you do after that?

(Testimony of Alfred E. Gatens.)

A. After that I think I went to the Patterson Transfer Co.

Q. What doing? A. Handling cotton.

Q. Handling cotton? A. Yes, sir.

Q. You mean physically handling the bales, or just handling it clerically? A. Clerically.

Q. And when you got through with that clerical work, what did you do after that?

A. I went west.

Q. What did you do after you went west?

A. I accepted a commission in the Mexican revolutionary forces.

Q. And you were a soldier there for how long?

A. I was a white captain.

Q. What, a white captain, that is what was your answer? A. I was a captain.

Q. A captain? A. Yes, sir.

Q. Well, you were in that service how long?

A. I think I came out of there about the 10th of July.

Q. What year? A. 1911.

Q. What did you do after that?

A. I went East and went into the Medical University of Tennessee.

Q. And stayed there how long?

A. I came away from there [65—36] in '13.

Q. Did you thereafter go into the Government service? A. I went west with tuberculosis.

Q. How is that?

A. I was sent west for tuberculosis.

Q. For treatment?

(Testimony of Alfred E. Gatens.)

A. I do not know about treatment.

Q. Well, you were not treating somebody else, were you?

The COURT.—No, it was treatment of his own condition.

Mr. PLUMMER.—That is what I am trying to get him to say, but he seems to hesitate.

Q. When you got out of that, what did you do?

A. Got out of what?

Q. Getting treated for tuberculosis, or if you were not treated, say so. I am trying to get some answers out of you. A. I see you are.

Q. You know it, don't you? A. You bet I do.

Q. What did you do after you got through being treated for tuberculosis? A. I am still living.

Q. Answer the question, can you do that?

A. Yes, if you put a direct question.

Q. What occupation did you follow after you were treated for tuberculosis?

A. I took a commission in the flying column under General Dodd.

Q. You were in the service, were you?

A. I was, scout and interpreter.

Q. And how long did you work at that?

A. I came out of the punitive expedition a little before the first of the year.

Q. What year?

A. I came out in '16. They came out in '17; I came out the last of '16, after my services were no longer needed.

Q. What did you do then between the time you

(Testimony of Alfred E. Gatens.)

left the [66—37] service and when you were appointed as narcotic inspector?

A. I went home on a visit.

Q. Then you have not done anything chemically, or as far as qualifying yourself as a chemical expert at all during your whole career, have you?

A. I do not know.

Mr. PLUMMER.—You do not know; all right.

(Witness temporarily excused.)

(Thereupon an adjournment was taken until 2:00 o'clock P. M. of the same day, Monday, October 9, 1922, at which time the trial was resumed and the following proceedings were had.) [67—38]

2:00 P. M., Monday, October 9, 1922.

Trial resumed.

ALFRED E. GATENS on the stand.

Cross-examination (Resumed).

(By Mr. PLUMMER.)

Q. Mr. Gatens, you testified, I believe, that you had had some experience in the medical profession, or at least some education along the lines of that particular science? A. Yes, sir.

Q. And where was that experience that you speak of? A. University of Tennessee.

Q. I beg your pardon.

A. University of Tennessee.

Q. Is that a medical college?

A. Medicine; medical branch of the University of Tennessee.

Q. Medical branch of the University of Tennes-

(Testimony of Alfred E. Gatens.)

see, what was you aiming at there, to qualify at what? A. Physician and surgeon.

Q. And how long did you study on that particular branch of that college?

A. Two years, a little over with my extra study.

Q. You never studied chemistry, did you?

A. Yes.

The COURT.—I would rather infer from the statement made by counsel this morning that there was no issue as to the character; it can be examined by an expert.

Mr. PLUMMER.—I am going to contend, if your Honor please, that there has been no examination of these vials at all that would give anyone any knowledge as to what they contain. We will have evidence to show that it is different from what the witness testified the contents are. [68—39]

The COURT.—You may proceed, then.

Mr. PLUMMER.—Q. You know, don't you, in the study of the medical profession, that does not necessarily include chemistry, you know that, don't you? A. It certainly does include chemistry.

Q. You contend, then, that a physician is capable of making analyses?

A. I can only state what is readily known, that chemistry is one of the important studies, both organic and inorganic.

Q. I mean for the analyses of different chemicals? A. Qualitative and quantitative analyses.

Q. The profession of chemistry is one thing, and

(Testimony of Alfred E. Gatens.)

the profession of medicine is another one, isn't it, distinct professions?

A. That was not your question.

Q. Read it. (Question read.)

A. I think a chemist, as your idea—

Q. I am not asking you my idea, I am asking you for the fact as recognized by the professions.

A. I can only say that the doctor has to qualify in chemistry.

Q. So as to make analyses of different chemicals?

A. He makes them in his medical laboratory, yes.

Q. Did you examine these different vials and bottles that you have got here in evidence?

A. Not all of them.

Q. Well, you have testified about all of them, haven't you? A. No.

Q. What?

A. There is nitroglycerine and iodine and quite a few other things there—

Q. Did you examine them with reference to what they [69—40] contain chemically?

A. Read the label.

Q. Is that all you done?

A. On the ones that did not interest me.

Mr. GARVIN.—If the Court please, I might recall the testimony in order to save time. I think he testified that those that contained narcotics, he did make analysis of, but the others he did not.

The COURT.—Have the others been introduced here?

Mr. PLUMMER.—Yes, sir.

(Testimony of Alfred E. Gatens.)

The COURT.—For what purpose? Is there some of them here without narcotics?

Mr. GARVIN.—Some of them are empty vials.

The COURT.—They should not have been offered in evidence.

Mr. GARVIN.—I will withdraw them, if necessary.

Mr. PLUMMER.—Here is one says morphine sulphate. A. An empty bottle.

Mr. GARVIN.—The only purpose, if the Court please, in moving for their admission, you recall the statement of my witness on direct examination was that the doctor said he did not have any cocaine in there, and that Officer Aikers and Officer Gatens went over to the desk and the drawer was out and they found all of these.

The COURT.—The question is would an empty bottle contradict it?

Mr. GARVIN.—In addition to that, they found cocaine there.

The COURT.—What they found is competent, but those that are empty would not be.

Mr. GARVIN.—I will withdraw those.

(Thereupon the box of empty bottles heretofore marked Plaintiff's Exhibit No. 5, were withdrawn from evidence.) [70—41]

Mr. PLUMMER.—Q. Mr. Gatens, how do you analyze a tablet, for instance what do you do in order to get it in shape to analyze?

A. Analyze a tablet of what?

(Testimony of Alfred E. Gatens.)

Q. Any kind of tablet, a tablet contained in the size of that vial?

Mr. GARVIN.—If the Court please, I do not think that is a proper question.

Mr. PLUMMER.—I want to know how he does it.

Mr. PLUMMER.—Q. I will hand you this bottle, then.

The COURT.—You can ask him how he did it in this case.

Mr. PLUMMER.—Q. I will hand you this bottle, and want you to examine one of these tablets and analyze it.

A. I would read the label first. I see there is morphine in there.

The COURT.—He wants to know how you analyzed it.

A. If I suspected morphine, I would treat it with a little nitric acid; if it gave a turkey red color, I would conclude it was morphine.

Mr. PLUMMER.—Q. If it would give a turkey red color, you would say it was morphine?

A. I would not have to.

Q. You would have to take out one of the tablets, or break off a particle?

A. A tiny particle is sufficient.

Q. How small? A. Very small.

Q. Well, how small? A. Very small.

Q. What part of a tablet, how much?

A. A very small particle.

Q. A quarter of it? A. No.

(Testimony of Alfred E. Gatens.)

Q. How much?

The COURT.—If this is going to take up very much time, [71—42] I will insist on the Government having an analysis made by a witness whose examination as an expert will not take up too much time on qualifications.

Mr. PLUMMER.—Q. What part of those tablets did you break off?

A. Here is one that is chipped, and that chip is sufficient for narcotics by nitric acid.

Q. A chip just about as big as the point of a pin?

A. A tiny chip is sufficient to show a turkey red color.

Q. Do you recall examining that tablet?

A. I do not say that I did.

Q. Well, do you say so? A. I do not.

Q. I will show you another one that has been introduced in evidence, which you have said you examined, and show me if there is any part broken off of any of those?

A. Yes, there is, the tablet on the bottom.

Q. Which one? A. It is all worn down.

Q. I will hand you these other bottles collectively, so as to save time, and outside of this one that has some parts broken off that are still in the bottle, see if there are any parts of those broken off that you could chemically analyze, outside of the parts that are in the bottle.

A. I cannot see where that is necessary if it is labeled.

(Testimony of Alfred E. Gatens.)

Q. All right, you just went by the label mostly, didn't you? A. Not mostly.

Q. Did you have any conversation at all with Mrs. Casey before you sent her up there to try to trap Linder?

A. I had a conversation with her, but the trapping of Linder I do not understand you.

Q. Who was working under you, who is this man Brown she [72—43] speaks of that was kind of steering her on this thing?

A. He was not working under me.

Q. Do you know him?

A. I know of such a person.

Q. Did you ever talk with him? A. I have.

Q. When? A. Two or three occasions.

Q. I mean with reference to this case?

A. Yes, the afternoon I met this woman.

Q. Was that on the 1st of April? A. Yes.

Q. Beg pardon. A. It was.

Q. What did he have to do with your department, anything? A. Not a thing.

Q. How did you happen to meet him? I do not ask you what he said, because I cannot dispute it.

A. I think I first saw him in jail.

Q. Beg pardon.

A. I think I first saw him in jail.

Q. In jail? A. Yes.

Q. Was he an addict too, so far as you know?

A. I think he was in on a narcotic charge.

Q. He was in on a narcotic charge?

A. Yes, sir.

(Testimony of Alfred E. Gatens.)

Q. What was your agreement with him, what part he was to take in this thing?

A. Not anything at all.

Q. Just went down there to see him?

A. I made no agreement.

Q. Had he been up to Linder's office, that you knew anything about? A. Not that I knew of.

Q. Not that you knew of?

A. When I saw him in jail was quite a while before he was free.

Q. With reference to this charge against Dr. Linder, you did not know he was ever up in Linder's office? [73—44]

A. I did not know the purchase had been made, until—

Q. Until? A. —I engineered this.

Q. Until you talked with Mrs. Casey?

A. Oh, yes, I knew from other people.

Q. You knew from other people. I say so far as Brown was concerned, you did not get any information from him? A. Oh, yes.

Q. About Dr. Linder? A. Oh, yes.

Q. Had you talked with him before that?

A. I had lots of information from different places.

Q. Had you asked him to take part in this raid?

A. I did not.

Q. Had he ever told you he had been up in Linder's office, if so when?

A. I do not recollect.

(Testimony of Alfred E. Gatens.)

Q. Well, if he had told you, you would recollect it, wouldn't you? A. Maybe so.

Q. You think you would, don't you?

A. I think probably I would.

Q. Then practically all of the information you got about Dr. Linder selling narcotics or having narcotics on hand was what you had obtained from Mrs. Casey, so far as this case is concerned?

A. Those particular parties, yes, sir, and from other officers.

Q. I did not say from other officers, I do not know anything about them, I cannot dispute it. And Brown did not give you any information, did he? A. Brown was acting as an informer.

Q. Brown was acting as a stool-pigeon, was he?

A. An informer.

Q. Had you sent him up to Linder's office, to see if he [74—45] could buy narcotics?

A. I had not.

Q. Did you ever know of him being up there?

A. Not that I know of.

Mr. PLUMMER.—Will you give me the record in this case, Mr. Clerk. (Files handed to counsel.)

Q. You obtained a search-warrant, to search Dr. Linder's office, didn't you? A. I did.

Q. And you swore to the complaint that that search-warrant was based on?

A. On information received, yes, sir.

Q. I say you swore to that complaint, didn't you?

A. I certainly did.

Q. I show you the affidavit upon which that

(Testimony of Alfred E. Gatens.)

search-warrant was based and ask you if that is your signature? A. It is.

Q. I wish you would read for the benefit of the jury that part that is written in there as to where you obtained that information.

A. The possession and sale of narcotics by Dr. Charles O. Linder at his offices at 609 to 614 Jamieson Building, in the City of Spokane, Wash.

Q. Go ahead. A. Just a minute, please.

Mr. PLUMMER.—I object to counsel coaching the witness.

Mr. GARVIN.—I just told him what this word was.

The COURT.—The writing speaks for itself.

A. I make this affidavit on information as to the facts stated given me by C. E. Brown of Spokane.

Mr. PLUMMER.—Q. You swore to that before Judge Dirks, didn't you? A. I certainly did.

Q. And now you say a moment ago you had no information from him at all?

A. I say Brown was acting as an informer.

Q. As a matter of fact you put that man Brown's name in there so that the defendant would not know who was the real [75—46] person to be sworn in this case as the chief witness, didn't you?

A. No.

Mr. PLUMMER.—I offer these in evidence.

The COURT.—It is admitted.

(Thereupon affidavit for search-warrant and search-warrant were received in evidence as Defendant's Exhibit No. 7, admitted, which are in words and figures as follows:)

Defendant's Exhibit No. 7.

(UNITED STATES COMMISSIONER'S
BLANKS—No. N-2.)

Search-warrant, with affidavit therefor.

United States of America,
Eastern District of Wash.,
—— Division,—ss.

AFFIDAVIT FOR SEARCH-WARRANT.

BE IT REMEMBERED, That on this day, before me, the undersigned, a United States Commissioner for the Eastern District of Wash., Division, came A. E. Gatens, who, being by me duly sworn, deposes and says that the laws of the United States, namely, the Har. Narcotic Act Revised Statutes, are being violated by reason of the facts, to wit:

The possession and sale of narcotics by Dr. Chas. O. Linder at his offices at 609 to 614 Jamison Bldg. in the City of Spokane, Wash. I make this affidavit on information as to the facts stated given me by C. E. Brown of Spokane, being the premises of said Dr. Chas. O. Linder and being situate in the City of Spokane and State of Wash., and within the district above named.

(Signed) A. E. GATENS (Affiant).

Sworn to before me, and subscribed in my presence, this 1st day of April, A. D. 1922.

[Seal] (Signed) JOHN L. DIRKS,
United States Commissioner as Aforesaid.

This cause coming on for hearing on the application for a [76—47] search-warrant supported

by the affidavit above set forth, the undersigned Commissioner thereupon being satisfied that there is probable cause to believe that the grounds set forth in said application and affidavit exist, and that the law is being violated as charged, does hereby so find.

(Signed) JOHN L. DIRKS,
United States Commissioner as aforesaid.

[Endorsed]: Filed 4/1/22. John L. Dirks,
United States Commissioner for Eastern District
of Washington. Filed in the U. S. District Court,
Eastern Dist. of Washington. Apr. 18, 1922.
Alan G. Paine, Clerk. Eva M. Harding, Deputy.

United States of America,
Eastern District of Wash.,
—— Division,—ss.

SEARCH-WARRANT.

To A. E. Gatens, Internal Narcotic Inspector Officer of the United States for the Eastern District of Wash. and to His Deputies, or Any of Them.

WHEREAS, complaint on oath, and in writing, supported by affidavit, has this day been made before me, John L. Dirks, a United States Commissioner for the said District, by A. E. Gatens, alleging that the laws of the United States, namely, the National Har. Nar. Act Revised Statutes, have been and are being violated by the unlawful possession and sale of narcotics by Dr. Chas. O. Linder at his offices in the City of Spokane to wit Rooms 609 to 614 Jamison Block, City, being the

premises of the said Dr. Chas. O. Linder, and being situate in the city of Spokane and State of Wash. and within the district above named.

YOU ARE THEREFORE HEREBY COMMANDED, in the name of the [77—48] President of the United States, to enter said premises, in the day or night time, with the necessary and proper assistance, and there diligently to investigate and search into and concerning said violations, and to report and act concerning the same as required of you by law.

Given under my hand and seal on this 1st day of April, A. D. 1922.

[Seal] (Signed) JOHN L. DIRKS,
United States Commissioner as Aforesaid.

Endorsed:

RETURN ON SEARCH-WARRANT.

RETURNED, this day 22d day of April, A. D. 1922.

SERVED, by making search as within directed; upon which search I found 1 vial containing 9 tablets Scopolamine 1/500 gr. Morphine 1/6 gr., Dionin 1/3 grain each tablet—2 vials containing total of 22 tablets Hyocine 1/100, Morphine 1/4, Cactoid 1/24—2 containing total of 33 tablets Morphine 1/20, Nitroglycerine 1/50, Strychnine 1/50—1 vial containing 1 Iodine tube. Surrendered by Dr. Linder as total Stock on hand. Also found and confiscated following drugs of which Dr. Linder denies ownership:

1 small bottle labeled Murgitroyd containing 11 tablets cocaine Hel. 1/2 gr. each; 1 vial number 14

(Testimony of Alfred E. Gatens.)

containing 7 Cocaine Hcl. tablets 1/2 gr. each, 1 vial #77046-600 843 containing 6 tablets cocaine Hcl. 1/2 gr. each. 1 vial containing 7 tablets Hyocine 1/100, Morphine 1/4, Cactoid 1/24. 1 vial containing 20 tablets Nitroglycerine 1/100, Strychnine 1/50, Morphine, 1/20. Also number of empty glass vials and Federal Reserve \$5.00 bill #L-29055472A and 1 vial containing 3 tablets 1/2 gr. each Morphine.

I, the officer by whom this warrant was executed, do swear that the [78—49] above inventory contains a true and detailed account of the property taken by me on the warrant.

A. E. GATENS (Signature),

Int. Rev. Narcotic Inspector.

Sworn to and subscribed before me this — day of —, 19—.

United States Commissioner, — District of —,
— Division.

Mr. PLUMMER.—Q. You went into this office after Mrs. Casey came out and after you say she had given you this dope that was got from Linder, you and the other two officers and Mr. Peyton just raided his office in a very boisterous manner, with a lot of customers in there, a lot of patients?

A. No.

Q. You knew this was Saturday afternoon, and if you could arrest Dr. Linder he could not get out until Monday?

Mr. GARVIN.—I object to that as totally incompetent.

(Testimony of Alfred E. Gatens.)

A. A narcotic violation does not make any difference from Saturday or Sunday or any other day.

Mr. PLUMMER.—You went in there when he had a lady patient, when she had nothing but a kimona on, and insisted on butting in there and raiding his office in the presence of all of his customers and this woman who was practically undressed, when you knew he was a prominent physician?

A. There was no imposition imposed upon anyone unduly by me.

Q. You searched the office there, didn't you?

A. Yes, I did.

Q. And when you discovered in some remote place somewhere a [79—50] little, small bottle of cocaine— A. Several small bottles.

Q. You found this small vial here of cocaine?

A. Also those others, yes.

Q. That is marked mostly morphine, I am speaking about cocaine. A. So am I.

Q. How much is there in here?

A. I do not know.

Q. You are a chemist?

A. Open it and count them.

Q. You do it. A. You do it.

Q. I am not testifying.

The COURT.—Oh, just estimate.

The WITNESS.—Eleven.

Mr. PLUMMER.—Q. Eleven tablets; about how much in each tablet? A. I cannot tell.

(Testimony of Alfred E. Gatens.)

Q. You are a chemist, aren't you?

A. You cannot tell a dosage of a hypodermic tablet.

Q. Cannot even give an estimate?

A. No. It might be a thousandth of a grain.

Q. When you discovered this small vial of eleven or half a dozen or whatever it is tablets, and these other small vials containing a few tablets, three or four in that one, perhaps three or four in that one, he told you, didn't he, when you discovered them there that about two years ago before that he had bought some cocaine at one of the drug-stores to treat Mrs. Carrie Schnatterly?

A. Not that I know of, and if he did he did not tell the truth, for that is not two years old.

Mr. PLUMMER.—If the Court please, I move to strike out that last part of the answer.

The COURT.—That last part will be stricken.

Mr. PLUMMER.—Q. Anyhow, I won't say two years, but sometime [80—51] before?

A. I do not remember the detail you speak of.

Q. You do not remember that?

A. I do not remember that.

Q. You do not remember him saying anything about it? A. No, sir.

Q. What did he say when you discovered this cocaine?

A. He explained something about making an order form and only part of it being delivered, and later it was delivered when he repeatedly told

(Testimony of Alfred E. Gatens.)

me in the office he had not any of that nor of the other bottles of cocaine.

Q. Mr. Gatens, you being a narcotic officer under the Government of the United States, and Internal Revenue Department, I will ask you to identify a circular sent out by the Treasury Department to doctors and physicians as to their duties with reference to narcotics, and ask you to identify that. A. I know what that is.

Mr. PLUMMER.—Mark it, please.

The COURT.—I think the Court will take judicial notice of it.

Mr. PLUMMER.—That is all it is for, is to save the record.

The COURT.—It is not necessary to encumber the record at all, because any Court takes judicial notice of regulations.

Mr. PLUMMER.—This is the object of this, if your Honor please, I want to show the malice he had in making a raid of this office, knowing what the duties of the officers were from these circulars, and show the malice in the way he acted there, when there was not any evidence to justify him.

The COURT.—Proceed.

Mr. PLUMMER.—Q. I will now show you another circular, entitled, "Regulations No. 35."

A. I know that also. [81—52]

Q. I will ask you if that is it?

A. Yes, that is it.

(Thereupon said circulars were marked Defend-

(Testimony of Alfred E. Gatens.)

ant's Exhibits Nos. 8 and 9 for Identification, respectively.)

Q. When you made this raid on Dr. Linder, knowing him to be a physician and surgeon in this community, I will ask you if you had in view these paragraphs of the regulations sent out to doctors in the practice of their profession that I have just referred to, and which have been offered in evidence: "A reputable physician directly in charge of *bona fide* patients suffering from diseases known to be incurable, such as cancer, advanced tuberculosis, and other diseases well recognized as coming within this class, may in the course of his professional practice and strictly for legitimate medical purposes, dispense or prescribe narcotic drugs for such diseases, provided the patients are personally attended by the physician, that he regulates the dosage, and prescribes no quantity greater than that ordinarily recognized by members of his profession to be sufficient for the proper treatment of the given case." You had that in view, didn't you? A. I certainly know that.

Q. And you made that raid?

A. I do not consider that—

Q. I am not asking you what you consider it. Just a moment. There is some more here, and also reading from Regulations No. 35, I will ask you if you had this in view, reading from Paragraph 117, speaking with reference to retailers and prac-

(Testimony of Alfred E. Gatens.)

tioners. Practitioners, you understand that to mean doctors, don't you?

A. I understand. [82—53]

Q. "A prescription, in order to be effective in legalizing the possession of unstamped narcotic drugs and eliminating the necessity for use of order forms, must be issued for legitimate medical purposes. An order purporting to be a prescription issued to an addict or habitual user of narcotics, not in the course of professional treatment in an attempted cure of the habit, but for the purpose of providing the user with narcotics sufficient to keep him comfortable by maintaining his customary use is not a prescription within the meaning and intent of the act; and the persons filling and receiving drugs under such an order, as well as the person issuing it, will be regarded as guilty of violation of the law."

"Exceptions. Exceptions to this rule may be properly recognized (1) in the treatment of incurable disease, such as cancer, advanced tuberculosis, and other diseases well recognized as coming within this class, where the physician directly in charge of a *bona fide* patient suffering from such diseases prescribes for such patient, in the course of his professional practice and strictly for legitimate medical purposes, and in so prescribing indorses upon the prescription that the drug is dispensed in the treatment of an incurable disease; and (2) where the attending physician prescribes for an aged and infirm addict whose

(Testimony of Alfred E. Gatens.)

collapse from the withdrawal of the drug would result in death and in which case he indorses upon the prescription that the patient is aged and infirm, giving age, and that the drug is necessary to sustain life."

And then with reference to execution. "All prescriptions for drugs and preparations not specifically exempt under section 6 of the act must be dated as of and signed on the day when [83—54] issued and must bear the full name and address of the patient and the name, address, and registry number of the practitioner," and so forth.

Now, I think that is the only thing I want to refer to. There is one back here that I overlooked, page 61, quoting from the Harrison Narcotic Act—I am asking you now if you had these in mind when you made the raid.

A. I had them all in mind.

Q. I am making specific reference to this one: "It shall be unlawful for any person not registered under the provisions of this Act, and who has not paid the special tax provided for by this Act, to have in his possession or under his control any of the aforesaid drugs; and such possession or control shall be presumptive evidence of a violation of this section, and also of a violation of the provisions of Section one of this Act,"—you knew he had been registered, didn't you?

A. I certainly did.

Mr. GARVIN.—If the Court please, the records in the case allege that he is a person registered.

(Testimony of Alfred E. Gatens.)

Mr. PLUMMER.—All right, there is no dispute about that.

Mr. GARVIN.—There is no application of Section 8, so far as the defendant is concerned.

Mr. PLUMMER.—Q. "Provided, that this section shall not apply to any employee of a registered person, or to a nurse under the supervision of a physician, dentist, or veterinary surgeon registered under this Act, having such possession or control by virtue of his employment or occupation and not on his own account; or to the possession of any of the aforesaid drugs which have been prescribed in good faith by a physician, dentist or veterinary [84—55] surgeon registered under this Act; or to any United States, State, county, municipal, District, Territorial, or insular officer or official who has possession of any said drugs, by reason of his official duties, or to a warehouseman holding possession for a person registered," and so on. "It shall not be necessary to negative any of the aforesaid exemptions in any complaint, information, indictment, or other writ or proceeding laid or brought under this Act; and the burden of proof of any such exemption shall be upon the defendant."

You knew, didn't you, that a Doctor who was registered had a right to keep in his possession a certain quantity of narcotics and drugs of all kinds, didn't he?

A. To keep in his possession?

Q. Yes, sir. A. To keep in his possession.

(Testimony of Alfred E. Gatens.)

Q. Yes.

A. Yes, he probably accounted for it.

Q. Then why were you raiding his place, if it was not through malice and malicious purpose?

A. We raid people frequently.

Q. You raided him to get that five dollar bill; you got that out of his pocket, didn't you?

A. I did.

Q. Why was it necessary to raid his office in the presence of his patients?

A. Because I wanted to see his stock of narcotics, to check them up.

Q. Couldn't you check them up without running in there with a star and badge, and deputy sheriffs and city policemen and raiding his office?

A. And not to secure the five dollar bill.

Q. After you had gotten the five dollars, that is all right, I know you like the five dollars, but you got that; if it was not [85—56] done maliciously, why was you making the raid to see if he did not have a few of these little bottles of narcotics, when he had a few of these little bottles, in the presence of his customers?

A. To complete my investigation.

Q. That is your answer, is it? A. Yes.

Mr. PLUMMER.—That is all.

Redirect Examination.

(By Mr. GARVIN.)

Q. Under the Regulation 35, have you got the right to go in—

Mr. PLUMMER.—Just a moment, I object to

(Testimony of Alfred E. Gatens.)

his testifying as to his right. The Court will tell about that.

Mr. GARVIN.—Q. What are your duties?

A. My duties are—

Mr. PLUMMER.—I object, if it is for the purpose of drawing out indirectly what his legal duties are.

The COURT.—You have been going into matters of law this last fifteen minutes.

Mr. GARVIN.—Oh, all right, come down, Mr. Gatens.

Mr. PLUMMER.—I wanted to show malice on his part.

Witness excused.

Mr. PLUMMER.—I want to recall Mrs. Casey.
[86—57]

Testimony of Ida Casey, for the Government (Recalled—Cross-examination).

IDA CASEY, a witness on behalf of the United States, heretofore sworn, being recalled, testified in its behalf as follows:

Cross-examination.

(By Mr. PLUMMER.)

Q. Mrs. Casey, do you know O. E. Bender? Mr. Bender, will you stand up? The gentleman here, did you ever see him before that you know of?

A. No.

Q. I will ask you if at the time of your visit to Dr. Linder's office on March 30th, when you claim that you had gone in there and told him you were

(Testimony of Ida Casey.)

an addict and wanted some dope, on account of your being an addict, if you and Dr. Linder in coming out of his private office into the office, the outer office, in which Mr. Bender was already sitting, or in there anyhow, if this conversation did not happen between you and Dr. Linder, as you were walking out, and you were going outside—

Mr. GARVIN.—Is this on April 1st?

Mr. PLUMMER.—No, this is on March 30th, the first visit.

Q. You both came through the room where Mr. Bender was sitting, that the doctor said to you that he thought you had some malignant growth, might be an ulcer or cancer, and said he could not be certain after only one preliminary examination; that the doctor told you to go to your own doctor as Doctor Linder did not care to have her case, and you either in response clearly or by bowing your head approved what he said?

A. He did not.

Q. Nothing of that kind was said?

A. No, sir.

Mr. PLUMMER.—That is all.

Witness excused. [87—58]

Testimony of Harlan I. Peyton, for the Government.

HARLAN I. PEYTON, called as a witness by the United States, being first duly sworn, testified in its behalf as follows:

Direct Examination.

(By Mr. GARVIN.)

Q. Will you state your full name.

A. Harlan I. Peyton.

Q. Mr. Peyton, you are living here in the city of Spokane? A. Yes, sir.

Q. With the Peyton Investment Company?

A. Yes, sir.

Q. You are also president of the White Cross, are you not? A. I am.

Q. Were you with Mr. Keenan, Mr. Aikers and Mr. Gatens on the 1st day of April, at the time you went into the Doctor's office in the Jamieson Building?

A. Well, I went in about a minute or two after they went in. I would say I was there.

Q. You just state what you did in there at that time, what you saw and what took place.

A. Well, I went into Doctor Linder's office. There were one or two people sitting there; the girl was sitting at the desk. I asked if they were in the other room. I followed them in. I stood in the doorway and the three officers were ahead of me, and Dr. Linder was talking to them, and just as I entered they took this five dollar bill out

(Testimony of Harlan I. Peyton.)

of his pocketbook. They matched it up with a sheet that they had. There was some conversation. I do not recall it word for word.

Q. Well, the substance of it?

A. The substance of it was Mr. Gatens made the statement, "Don't you know she is an addict and you should not administer narcotics to her?" and I believe his reply was she needed it, or [88—59] something like that. That, to the best of my knowledge, was the statement made at that time. I heard the remark about cocaine. He said, "I have no cocaine." Mr. Gatens said, "You must have." They were walking around the room, it was kind of a chain-gang affair. We were in his private office, we were not in the reception room at all, and they found these narcotics, what I understand to be cocaine, of course I am not a chemist, I do not claim to be.

Mr. GARVIN.—That is all; you may cross-examine.

Cross-examination.

(By Mr. PLUMMER.)

Q. After Mr. Gatens had searched the house there, searched the place and made them open the safe, and looked all around through there and after you had found this small amount of cocaine there and spoke to Dr. Linder about it, you recollect that part of it, don't you, where he said that he now recollected some time ago he had bought some from a drug-store some time ago, I do not know whether he mentioned the name or not, but

(Testimony of Harlan I. Peyton.)

Mrs. Schnatterly was the patient, his real patient, and that he had forgotten he had it there?

A. I recall him saying he had forgotten it.

Mr. PLUMMER.—That is all.

Redirect Examination.

(By Mr. GARVIN.)

Q. Was there any particular reference to any particular individual he had it for?

A. No, I am not sure about that.

Mr. GARVIN.—That is all.

Witness excused. [89—60]

Testimony of Frank Keenan, for the Government.

FRANK KEENAN, called as a witness by the United States, being first duly sworn, testified in its behalf as follows:

Direct Examination.

(By Mr. GARVIN.)

Q. Will you state your full name, please?

A. Frank Keenan.

Q. You are one of the city detectives here for the city of Spokane? A. Yes, sir.

Q. You were present at the time you went in with the other officers to Dr. Linder's office in the Jamieson Building? A. I was, yes, sir.

Q. Just state to the jury what you did and what you found there and what took place.

A. We went into the office of Dr. Linder and probably were in the reception room three or four minutes, I would not say how long, we were in there a short time, and then Mr.—if I recollect

Testimony of Frank Keenan.)

right, Dr. Linder came to the door of the reception-room and at that time Officer Gatens told him who he was and what he wanted, and went into his private room there, and he had a patient in there at that time. I think she went into another room, and he asked him for his money, that is, bills, and he took out a pocketbook or wallet out of his pocket, and he had taken this bill out of this. Then he asked him about his narcotics, and he handed him a small package of narcotics and told him that was what narcotics he had there, and then he had another little office right off of that and I went in there and I think it was Aikers and Gatens and Dr. Linder went down—there are five or six offices there—they went down to the other end and I went down there after a little while and they [90—61] showed me some more narcotics that they had found down there. I did not see them found.

Q. Did you have any conversation with the doctor at that time up there?

A. Why, Officer Gatens was talking to him most of the time there, and he was censuring him for selling narcotics to this woman. I cannot recall the exact words, something about had ought to know better than selling narcotics to hop fiends or addicts, something along that order.

Mr. GARVIN.—You may cross-examine.

Cross-examination.

(By Mr. PLUMMER.)

Q. The Doctor has several offices there in the Jamieson Block?

Testimony of Frank Keenan.)

A. I would say he has five or six different rooms.

Q. Quite a large institution? A. Yes, sir.

Q. And you examined there and found a small drug-store?

A. Yes. There is one room right off there that is all bottles.

Q. All bottles, a drug-store in his own office?

A. Yes, sir.

Mr. PLUMMER.—That is all.

Witness excused.

Mr. GARVIN.—Call Officer Aikers.

The COURT.—Do you expect to prove the same by this witness as Officer Keenan testified?

Mr. PLUMMER.—We will admit that he will testify the same as the other officer.

Mr. GARVIN.—With the exception that he is the one that found the cocaine. [91—62]

Mr. PLUMMER.—That is all right. We do not deny that they found it.

Testimony of Alfred E. Gatens, for the Government (Recalled).

ALFRED E. GATENS, a witness on behalf of the United States, heretofore sworn, being recalled, testified in its behalf as follows:

Direct Examination.

(By Mr. GARVIN.)

Q. Mr. Gatens, the time that you went into the office on April 1st, did you take the records that he had there relative to his purchases and order

(Testimony of Alfred E. Gatens.)

forms under the Harrison Act, for the purchase of cocaine and morphine?

A. I asked that all of his records be turned over to me and received these.

Q. And are those the records, Mr. Gatens?

A. All that I have received.

Q. Have you made an examination of those records, Mr. Gatens?

A. Yes, sir, the purchase order forms.

Q. I am going to ask you, Mr. Gatens, whether or not there is any record in any of these in reference to the prescribing or giving of either cocaine, morphine or by-products to one Ida Casey, from the 29th day of March, 1922, up to and including the 1st day of April, 1922?

A. I was not shown any record of disbursement whatever and I was told that was the entire record.

Mr. PLUMMER.—Never mind. We object to what he was told and move to strike that out.

Mr. GARVIN.—Q. You asked the Doctor for his records at that time? A. I did. [92—63]

Q. And what did he tell you?

A. That is all.

Mr. GARVIN.—If the Court please, we ask to admit these.

Voir Dire Examination.

(By Mr. PLUMMER.)

Q. As soon as you went in there, into his office, after Ida Casey came out, you arrested him?

A. This was not as soon, Mr. Plummer, this was later.

(Testimony of Alfred E. Gatens.)

Q. I say you arrested him as soon as you could after she came out, you and Peyton, your whole bunch was out in the hall? A. Yes, sir.

Q. You went in and arrested him and put him in jail?

A. No, we searched for a while.

Q. After you got through searching?

A. Yes.

Q. And kept him there until seven o'clock until Judge Dirks, the Commissioner, had a chance to fix a bend for him?

A. Did all we could to get him out.

The COURT.—When did you get these records?

The WITNESS.—On April 1st.

The COURT.—What time on April 1st?

The WITNESS.—We had not been in there but a very short time.

Mr. GARVIN.—What time of the day?

The COURT.—What time with reference to his arrest?

The WITNESS.—I suppose we came out between five and six.

The COURT.—What time, with reference to his arrest?

The WITNESS.—While we were in there.

Mr. PLUMMER.—I move to strike the testimony out as entirely incompetent with reference to the third indictment.

The COURT.—There is testimony here with reference to a sale the day before. [93—64]

(Testimony of Alfred E. Gatens.)

The WITNESS.—There was no record of disbursement to anybody.

Mr. PLUMMER.—Q. Did you see his books?

A. I asked him to show all of them.

Mr. GARVIN.—If the Court please, this is a question of law.

Mr. PLUMMER.—Anyhow I think in the third count he refers to both dates.

Mr. GARVIN.—I refer to all of the dates.

The COURT.—I will submit to the jury the question if he was given no opportunity to make the entry, of course he could not be indicted for not making it.

(Thereupon said records were received in evidence as Plaintiff's Exhibit No. 10, admitted.)

Cross-examination.

(By Mr. PLUMMER.)

Q. Did you see this book at all?

A. No, the Doctor told me that was all he had.

Q. The Doctor was pretty much excited, wasn't he? A. I do not know.

Q. Raiding his office and arresting him?

A. He calmed down.

Q. He calmed down when he got in jail, I suppose? A. No.

Mr. PLUMMER.—That is all.

Witness excused. [94—65]

DEFENDANT'S CASE.

**Testimony of Dr. Charles O. Linder, in His Own
Behalf.**

DR. CHARLES O. LINDER, the defendant, being first duly sworn, testified in his own behalf as follows:

Direct Examination.

(By Mr. PLUMMER.)

Q. Doctor, you are the defendant in this case, are you? A. Yes, sir.

Q. And you are a regularly practicing physician and surgeon in this state and in this city?

A. Physician and surgeon, yes, sir, in this city.

Q. And have been for how many years?

A. For a number of years.

Q. For about how long? How long have you been practicing your profession?

A. I came early in 1894 or '5, I think.

Q. And you have your offices in the Jamieson Building? A. Yes, sir.

Q. And you are the Dr. Linder referred to in this other testimony, aren't you? A. Yes, sir.

Q. What position do you hold of an official character, either in the United States Government or which you have held, or with any other organization which would qualify you as such physician and qualify you with reference to diagnoses and things of that kind?

A. I am a member of the Volunteer Medical Societies, Medical Service Corps, organized during

(Testimony of Dr. Charles O. Linder.)

the World's War, and approved by the President of the United States, and about 60,000 physicians, patriotic physicians and surgeons have been enrolled in this organization.

Q. You served during the war in that capacity, did you? [95—66]

Q. Without compensation. Go ahead.

A. I am also a member of the American Organization of American Physical Research; also a member of the American Association of Orthopaedic Surgery. I am a member of the Medical Society of the United States; a member of the Allied Medical Associations of America.

Q. I will ask you to state whether or not you are the department physician for the United States Spanish War Veterans for Alaska and Washington, and have been for a number of years?

A. Yes, sir. I am a member of the Spanish War Veterans and I held the position as camp surgeon in this city for five terms, have held the position as department surgeon for three terms. Also a member of the Chamber of Commerce.

Q. That would not help you out medically in this. I do not know anything about them. Now, Doctor, when did you first get acquainted with this woman who calls herself Mrs. Casey? I presume that is her name; I am not questioning that, however.

A. On March 30th.

Q. This year? A. This year.

Q. And just tell the Court and jury the occa-

(Testimony of Dr. Charles O. Linder.)

sion, what happened there upon the first time you met her.

A. She entered my private office, with her hands on her stomach and complained of excruciating pains and wanted immediate relief, and she said that her doctor was out of town and would not be back for a few days. Further, she stated that she was a nurse and was taking care of an invalid and that unless relieved from her pain she would lose her job. Taking for granted that she was a *bona fide* patient, I gave her a cursory examination and found that— [96—67]

Q. Right there, in making that examination, just tell the jury what you did to find out what was the matter with her.

A. Well, she had to take part of her clothes off, of course, and then open up over the front of her abdomen, and then we usually in giving an examination give percussion, palpitation, in order to discover any tendency of hardness or lump that may have located in the stomach. In doing this, I discovered that the muscle became contracted over the abdomen from that contraction or hardness under or in the stomach. From that condition and her suggestive symptoms, that is, what she told me what she had been suffering, what pain she had, and her age, her cancerous age in a predisposed subject, that is a person who is subject to cancer, a cancer will usually take place at the time between forty and fifty years—

Q. I see, go ahead.

(Testimony of Dr. Charles O. Linder.)

A. Or maybe later, maybe up to seventy years, and her emaciated condition, I came to the conclusion that she either suffered from internal cancer or ulcer, but we all know that positive diagnosis of internal cancer or ulcer is not easy made, it cannot be made in a moment. Then, in order to relieve her from pain, I gave her a hypodermic.

Q. Of what? A. Of scopolamine.

Q. What is that?

A. That is a combination of morphine and scopolamine, so much morphine and so much scopolamine.

Q. What was the dose right there now?

A. $\frac{1}{6}$ grain of morphine, and the scopolamine runs up in hundredths parts of a grain.

Q. Was that the usual dose that a physician and surgeon usually gives?

A. That is a very light dose, but these are [97—68] very effective usually in such conditions, to relieve pain.

Q. All right, go ahead.

A. And she was instructed to take one tablet when the pain again became unendurable.

Q. What tablets did you give her at that time?

A. I gave her two tablets to take home.

Q. What kind of tablets?

A. One morphine and one compound of scopolamine, to take one of the tablets when the pain again became unendurable, and she was told not to come back to my office but to go to her own physician.

(Testimony of Dr. Charles O. Linder.)

Q. Now, at that time did she tell you that she was a dope addict, or had ever been, or anything of that kind? A. No, she did not.

Q. Did you have any suspicion that she was an addict?

A. Had no suspicion. She said she was taking care of an invalid and that she was a nurse, and that made me have confidence in her, that she really acted in good faith.

Q. And you made a record, did you, of that in your office book at the time?

A. I made a record. I took her name and address on the first call.

Q. I will show you this record here and ask you if that is the record you made on March 30th, on the first item there?

A. That is the record I made on March 30th.

Q. You read it.

A. To relieve pain and cancer or ulcer, March 30th, scopolamine and morphine compound by hypodermic to Mrs. Ida Casey, 2709 South Oak Street. That is the place where she said she worked. And then two tablets to take home, one tablet of scopolamine and morphine compound, and one tablet morphine sulphate, one-half grain.

Q. You charged her how much?

A. Five dollars for [98—69] examination.

Q. Now, was that all there was to that transaction that particular day? A. That is all.

Q. That is all there was to that?

A. Except that when we went out—

(Testimony of Dr. Charles O. Linder.)

Q. Oh, yes, I want to recall that. I will ask you to state whether or not when you went out the door with Mrs. Casey and in the presence of Mr. Bender, the gentleman over here that is sitting in that seat, whether or not—just tell what you said there. I will ask you to state whether or not you said this to Mrs. Casey, to which she made no objection at least, and suggested the truth by her silence, as you went through the room where Mr. Bender was sitting with a delicate woman, that you thought she had some malignant growth, might be ulcer or cancer, and said you could not be certain, that is, upon one preliminary examination, that you told her to go to her own doctor as you did not care to have the case, or words in substance to that; did that occur as she went out?

A. Yes, sir, I did tell her that.

Q. That was on the first visit she made on March 30th? A. Yes.

Q. Did you see any more of her until April 1st?

A. Regardless of my instructions not to come back into my office, she came back on April 1.

Q. Did she come there at all—she claims she was there three times; did she come there at all except on March 30th and April 1st?

A. No, sir, I never saw her.

Q. Go ahead now and tell what happened on April 1st.

A. On April 1 she again appeared at my office, complaining [99—70] of great pain and wanted relief, and she also stated that her doctor had not

(Testimony of Dr. Charles O. Linder.)

yet returned. As I did not want a patient to go away from the office with pain, I again gave her a cursory examination and upon palpitation of the muscles over the stomach they became contracted. This made me believe that the pain was real and prescribed for her as before. Another fact I may be permitted to mention here is that she came to my office asking for relief of pain. If she had asked me for narcotics, or if she had told me that she was an addict, I would have turned her down.

Q. Well, did she, on that visit on April 1st, tell you that she was an addict, or that she was addicted to the use of morphine or dope of any kind?

A. She did not tell me she was.

Q. Did you have any belief she was?

A. I did not have any idea whatsoever.

Q. After making this examination, what did you give her in the way of medicine, and what form did you give it to her in? A. What?

Q. Having reference to either a bottle or an envelope.

A. I gave her the medicine in an envelope.

Q. What did you give her?

A. I gave her, as stated, one tablet of morphine and one of scopolamine, in an envelope.

Q. Was that the same dose as you gave her before? A. You mean on April 1st?

Q. Yes, sir.

A. It was one tablet, if I remember right, the book will tell,—it was two tablets of morphine sulphate, one-half grain each, and one tablet of

(Testimony of Dr. Charles O. Linder.)

scopolamine compound, three tablets, I believe.
[100—71]

Q. Did you give her anything in a bottle, as indicated by this Plaintiff's Exhibit 2, did you give it to her in a bottle like that? A. No, sir.

Q. Did you ever have a bottle of that kind in your office?

A. I did not have such a bottle in my office. I did not dispense dosages of any kind in such bottle in my office.

Q. You have bottles larger than that, of the same general shape?

A. This is a dram size; I have one ounce bottles.

Q. I will show you one of the envelopes with your name on, and I will ask you whether or not that is the kind of receptacle you gave her this medicine in?

A. This resembles the envelope I give medicine in.

Mr. PLUMMER.—I offer it in evidence, showing the envelope, the writing is not material.

The COURT.—It will be admitted.

(Thereupon a small envelope was received in evidence as Defendant's Exhibit No. 11, admitted, and is attached hereto and made a part hereof.)

Mr. PLUMMER.—Q. When you gave her this examination and based upon her statements to you, after giving her this medicine she went out. You charged her five—what did you charge her on the 1st of April?

A. On the 1st of April she paid me five dollars.

(Testimony of Dr. Charles O. Linder.)

Q. That is the five dollars they made the raid on and took away from you? A. Yes, sir.

Q. What happened after that? Just go ahead and tell the jury what happened after she went out.

A. Well, I was taking care of another patient, Mrs. Chaiken, my office girl, Mrs. Westfall, called me to the door and said a gentleman wishes to see me on very important business. As soon [101—72] as I opened the door, this man Gatens rushed me and showed me a badge and claimed this badge to be a search-warrant, and immediately he began to rifle my pockets and my purse and took out the five dollar bill, and he was very rough and boisterous, as if under the influence of some intoxicant. He furthermore frightened my patient and she had to stay home in bed for several weeks.

Q. How many patients, people, did you have waiting in there that saw this exhibition, this raid?

A. I think I had in the office room five or six patients, maybe more. I had a big crowd there.

Q. Doctor, you have quite a supply of all kinds of drugs there of your own, that you use in your prescriptions all of the time? A. Yes, sir.

Q. Kind of a regular drug-store in one of your rooms? A. Yes, sir.

Q. Can you always remember just what particular quantity you have of any particular drug, until you look it up?

(Testimony of Dr. Charles O. Linder.)

A. Yes, I have a record of my drugs. My memorandum runs up four or five hundred different kinds.

Q. And sometimes you will buy drugs at one time and forget perhaps you have got those drugs on hand?

A. Yes. I cannot remember all of the drugs, you see.

Q. Now, the witnesses have testified that Mr. Gatens asked you if you had any cocaine, and you said you did not. What is the fact about that? Just give your version of that conversation, and all about it.

A. Mr. Gatens did not give the facts in the case.

Q. Tell what you say the facts are. [102—73]

A. He asked me to show him the safe, and show him the cocaine I had in the safe. He was hammering on the safe, and I told him I had no cocaine in the safe. As soon as I opened the safe, there was no cocaine there, but then we went through all of the rooms, and then we took my supply of narcotics which I had in an inner room, and there was a bottle or two of cocaine, especially one vial which I had had and not used, for a year and a half, I believe, on an asthma case.

Q. I will ask you if this is it? That is the one they discovered there, and found.

A. That looks like it; probably Murgytroyd's.

Q. All right, go ahead.

A. I had used this cocaine, this is not all I had

(Testimony of Dr. Charles O. Linder.)

used, I had used quite a bit of it on an asthma case, in order to relieve the asthma.

Q. Who was it? I think there is no objection to telling.

Mr. GARVIN.—I object to that, the official Government requisition forms are the best evidence as to what requisition for narcotics he had.

The COURT.—It is not the only evidence; proceed.

Mr. PLUMMER.—Q. Go ahead.

A. Her name was Mrs. Carrie Schnatterly. She had suffered with asthma for twenty years and I tried various remedies, and I was trying—

Q. You need not go into that. I want to get down to the fact of having it in there and not remembering it. How long was that you had bought that for her?

A. Perhaps nearly two years ago up to this time.

Q. And at the time he made a demand on you for narcotics, did you remember anything about having this on hand? [103—74]

A. I had not used it for a long time, I had overlooked this bottle.

Q. Just tell how you happened to get it, in such way that you might forget it.

A. I got it by requisition from Murgytroyd's Drug-store, and I ordered a whole dram of cocaine tablets, but Murgytroyd did not have only about half of the dram and he delivered half of the dram at the time when I made the requisition, and he told me he would deliver the balance at some time later

(Testimony of Dr. Charles O. Linder.)

there, but evidently they had forgot to deliver it and it did not come until about six months later on, when I had made another demand that it should be delivered.

Q. Doctor, just pour that out in your hand and tell the jury about how much there is in this awful bunch of cocaine, just state about how much there is there. Just pour it out into your hand and tell how much there is there.

The COURT.—How much is in each one, or do you know?

The WITNESS.—I cannot tell, except by the label; I cannot tell.

Mr. PLUMMER.—Q. Well, I cannot tell whether it was cocaine. About how much does each tablet weigh? A. I cannot tell.

Q. Well, when you give a dose for any legitimate purpose, about how much do you give of cocaine, for instance?

A. That depends upon who is the patient. If they are a new patient, give a very light dose, a half a grain or maybe more, prepare solutions, you take four or five tablets and so much water in solution.

Q. Would you use four or five tablets in giving one dose?

A. Yes, sir. You may have to use ten tablets in so much [104—75] water, a dram of water, eight per cent solution you use in order to induce anesthesia, local anesthesia.

(Testimony of Dr. Charles O. Linder.)

Q. Now, these little bottles they gathered in this raid they made on your *there*, you had those in the office, some of the yellow tablets in there, I do not know what color they are from the colored glass, *that* did you have those in there for?

A. These are used to relieve pain, a composition of hyocine, morphine and cactoid. It used to be very effective. They are not as effective as morphine, and they are very—

Q. What do you use them for?

A. Use them for pain.

Q. Temporary relief for pain, is that what it is?

A. Yes, pain of any kind.

Q. State whether or not, Doctor, it is customary for doctors who have a large supply of drugs like you have, to have a large quantity of those on hand to relieve pain?

A. Yes, it is, as far as I know the doctors have these vials on hand to relieve pain.

Q. After they made the raid on you there, went through your clothes and got the five dollars, did they arrest you? A. Yes, sir.

Q. Gatens arrested you and threw you in jail?

A. Yes, sir.

Q. Kept you there how long?

A. Three hours.

Q. That is, from four o'clock to seven o'clock at night? A. Yes, sir.

Q. Until you got out on bond. You heard the question I asked Mrs. Casey when she was on the stand with reference to a conversation which she

(Testimony of Dr. Charles O. Linder.)

admits she had between yourself, that is, [105—76] she doing all of the talking, however, and yourself and Mr. Brown and Mr. Stijer, when she had sent for you in the first place. Before we go into the conversation, because she has admitted that, before we go into that, how did you happen to go up to her rooms?

A. At five o'clock—

Q. That is the 22d of August, the day I refer to.

A. The 22d of August, this year, she called me over the 'phone and said that she wanted me to call on her, because she was sick. I, being busy at the time, could not go until six o'clock that evening, and then I made a call, in company with Mr. Brown and Mr. Stijer.

Q. State whether or not you did that at my advice to not talk with her at all unless you took two witnesses with you?

A. I did it at my attorney's advice to take witnesses with me. When she called up, she was perfectly sober. She knew very well what she was doing.

Mr. GARVIN.—To which we object as a conclusion and not responsive, if the Court please.

Mr. PLUMMER.—I was going to bring that out in the next question.

A. On arriving at the hotel we were met by the landlady, Mrs. Mildred Rogers.

The COURT.—I do not think it is necessary to go into that.

Mr. PLUMMER.—You do not have to go into

(Testimony of Dr. Charles O. Linder.)

that, because the conversation she has admitted I want to prove whether she was drunk or sober. Did she appear to be at all different than she appears on the stand here now?

A. She was in bed when we arrived, but she appeared about the same then as she appeared [106—77] on the stand, with exception to-day her cheeks were painted.

Q. That is natural; they all paint their cheeks. I show you a book here, which I will have marked unless admitted, and ask you if that is the record you kept of the treatment of Mrs. Casey, and that you made out as soon as you were able to make it when you got back to your office, after you had been thrown in jail? A. Yes, sir.

Q. And that states the facts as they occurred at the time? A. That states what was given her.

Q. How long was it after you treated her before you made this record? Now, the first treatment was on March 30th, that is before you were arrested. State whether or not you made that record shortly after you had treated her that day?

A. I made the record as soon as I got time to make the record. When she came in, I made a special record in a slip, on separate sheets, and then as soon as I get time I make the entry in the narcotic registry.

Q. And the second entry on April 1st, how soon did you make that, after you got out of jail?

A. When I got out of jail, I made it as soon as I had time to.

(Testimony of Dr. Charles O. Linder.)

Mr. PLUMMER.—I will offer it in evidence.

The COURT.—Admitted.

(Thereupon said narcotic register was received in evidence as Defendant's Exhibit No. 12, admitted, which is in words and figures as follows:)
[107—78]

Mr. PLUMMER.—You may take the witness. I may have one or two questions I have overlooked. I will ask to recall him, if your Honor please, if I have.

Cross-examination.

(By Mr. GARVIN.)

Q. Doctor, do you keep a record of the amount of narcotic drugs, by narcotic drugs I mean the derivatives of cocaine or opium and their compounds and things of that character, do you keep a record of all that you dispense? By dispense I mean that you administer to your patients?

A. I do not keep a record of what I dispense, except what I give to people on a call.

Q. That is, people confined to their bed?

A. Not necessarily. That means they get hurt or something else.

Q. They do not come to your office?

A. They do not come to my office.

Q. A case such as this, you keep a record?

A. I keep a record whenever it is required to make a record.

A. That is not my question. I am asking you if you do keep a record of the amount of narcotics you dispense to patients who come into your office?

(Testimony of Dr. Charles O. Linder.)

A. With that exception.

Q. With that exception, that is, when you go out to administer to patients who may be confined to their beds? A. Yes, sir.

Q. With that exception, you keep a record of narcotics you dispense?

A. Keep a record of all of them.

Q. But when did you start to keep this record Mr. Plummer showed you?

A. I started to keep that on March 30th. [108—79]

Q. You have a book prior to that?

A. I have a book prior to that.

Q. Where is that book now, Doctor?

A. I have it in my office.

Q. Did you have it in your office on the 1st day of April, Doctor? A. What is it?

Q. Did you have it in your office on the 1st day of April, 1922? A. I did.

Q. Can we secure that book now?

A. I suppose so.

Q. Do you recall any conversation with Mr. Gatens on the 1st day of April, in which he asked you for all of your records with reference to narcotics? A. Yes, sir.

Mr. GARVIN.—I am going to ask you to produce that book.

Q. Did you have any conversation with Mr. Gatens in relation to your records at that time, on April 1st? A. I think so.

(Testimony of Dr. Charles O. Linder.)

Q. Did you give him this bunch of records here, I think they are Plaintiff's Exhibit No. 9?

A. These are requisition sheets, requisition blanks.

Q. When you go and purchase either cocaine or morphine, you have to fill out an order, do you not, and present it? A. That is right.

Q. And you keep it?

A. I keep a duplicate. I keep a duplicate of the order.

Q. And you turned those over to Mr. Gatens, did you not?

A. Well, yes, only for those that were two years old.

Q. You turned all of these over to him, did you not?

A. Those that he asked for. He asked only for those.

Q. What did he say when he spoke to you, Doctor, if you [109—80] recall? A. When?

Q. On that April 1st, when he asked you for those records, what did he say to you?

A. He did not ask me for them. I told him, "You can have the requisition blanks, get them up for yourself."

Q. Doctor, what I am trying to get at is this, did he ask you for your records?

A. I do not remember. However, I will say maybe he did, and he had his hand on the record, this very book, there, and I was going to give it to him and he said, "Get to hell out of here! Go

(Testimony of Dr. Charles O. Linder.)

on and sit down," thinking I had some morphine I wanted to get away with, some morphine in the drawer.

Q. Doctor, do you remember some conversation you had with him about the quantity of morphine you had there, when he asked you if you had any cocaine—he asked you if you had any cocaine?

A. He asked me if I had any cocaine in the safe, "Open the safe; I want to see the cocaine in the safe," that is what he said.

Q. That is what he said? A. Yes, sir.

Q. He did not ask you if you had any other cocaine? A. He said the safe.

Q. Where is the safe located?

A. Out in the hall.

Q. Not in the building at all?

A. Yes, sir, in the hall, outside.

Q. That is not in your suite part? A. No, sir.

Q. He did not ask you about any other cocaine you might have in the office?

A. He did not mention cocaine, he said safe, open the safe, I want to see the cocaine in the safe.

Q. Did he ask you if you had any other narcotics up there? A. That I do not remember.

[110—81]

Q. Didn't he ask you to show him the supply of narcotics you had on hand?

A. Yes, sir, he did and I showed him. I opened the door voluntarily and told him to go through.

Q. You mean after him finding the others there?

A. What others?

(Testimony of Dr. Charles O. Linder.)

Q. The cocaine that was found in the drawer?

A. It was in the supply where I had the rest of the narcotics, he found it right there.

Q. I see.

A. He did not find any in the safe, though, as he thought he would have.

Q. Doctor, did your office records show that you had that quantity of cocaine on hand at that time?

A. My office—well, it was this, that I made a report to the Collector of Internal Revenue that this was lost.

Q. No, Doctor, you misconceive my question. I am asking you if your office records on the 1st day of April show that you had that quantity of cocaine on hand among your supplies?

A. I had not made any report yet; too early. I make a return every year to the Collector.

Q. Did you keep a record of what narcotic drugs you have on hand?

A. I make it once a year, that is all.

Q. You do not know from day to day what you have? A. No, I do not.

Q. And if you dispense narcotics in the office, do you always keep a record? A. Oh, yes; yes.

Q. Does that apply to cases where you not only give it out in tablet form, but where you might give a hypodermic injection?

A. That applies to where I give a hypodermic injection or tablets, if dispensed from the office.

[111—82]

(Testimony of Dr. Charles O. Linder.)

Q. Doctor, what medical school did you say you are a graduate of? A. Physio-Medical.

Q. Where is that located?

A. In Pennsylvania.

Q. Doctor, from your examination of Mrs. Casey, on the first occasion she went into your office, you say from the cursory examination you made, you felt from this contracted condition and one thing another, she had either internal ulcer or cancer, is that correct? A. Yes, sir.

Q. What was the basis of your conclusion?

A. The basis of my conclusion? The diagnosis was a working diagnosis, only temporary. The positive diagnosis, I had nothing. That would take perhaps days, and sometimes weeks, and repeated examinations before you can be fully determined.

Q. But you came to the conclusion at that time, however, it was one of those two things?

A. Yes, sir; I did.

Q. And you prescribed what?

A. I prescribed a hypodermic.

Q. You gave her the hypodermic then?

A. Immediately, in order to relieve pain.

Q. And then did you give her any tablets?

A. Yes, sir, I did.

Q. How many did you give her the first time?

A. The first time?

Q. Yes, sir. A. Two tablets.

Q. What were in those tablets?

The COURT.—He has gone over that.

Mr. GARVIN.—Q. What was the quantity of

(Testimony of Dr. Charles O. Linder.)

narcotics, Doctor, in the first two tablets that you gave her?

A. Why, one tablet, if I remember right, was 1/2 grain of morphine, one tablet [112—83] of half a grain.

Q. That would be a half a grain of morphine in the first tablet? A. I think it was.

Q. And in the other tablet, to the best of your recollection?

A. It is on the record there. I cannot give it positively, but it is on the record there.

Q. Did you prescribe any cocaine at that time, Doctor? A. I did not.

Q. Mrs. Casey, did you give her any instructions as to how to take those drugs? A. I did.

Q. What did you tell her to do with them, Doctor?

A. I told her to take one tablet when the pain became unendurable.

Q. How? By hypodermic injection, or internally? A. By the mouth.

Q. Orally? A. Of course.

Q. And then, Doctor, going a step further, on the second occasion you gave her some cocaine?

Mr. PLUMMER.—That was on April 1st.

Mr. GARVIN.—That was April 1st. That is the only one he has testified to.

Q. On April 1st, you gave her some cocaine and morphine, both? A. I gave her no cocaine.

Q. Just morphine?

(Testimony of Dr. Charles O. Linder.)

A. I did not say just morphine; I said scopolamine.

Q. Did you ever give her any cocaine, Doctor?

A. What?

Q. Did you ever give her any cocaine?

A. No, sir.

Q. Doctor, do you recall your examination, preliminary examination before the United States Commissioner, Mr. John L. [113—84] Dirks?

A. Very well.

Q. Do you recall your testimony up there at that time? A. I do not just know; if you read it—

Q. Just in order to refresh your memory, Doctor, on page ten Mr. Plummer asked you the question, "Did you deliver these tablets in the bottles that the Government introduced?" "No, sir, I have no such bottles in my office, to the best of my knowledge." "From the symptoms she stated to you and the pains complained of, and the location of the pains, what did it occur to you as being indicative of, of what malady or trouble?" "I felt sure that the pain and condition was similar to those of cancer or ulcer. The pain is almost the same in its early stages as of cancer." "Would that particular portion do her any good?" "As an addict that little amount of cocaine would not last longer than a snowball on a hot summer day." I am going to ask you if that is your answer?

A. That would depend on—

Q. I am asking you, Doctor, if that is your answer, did you make that answer?

(Testimony of Dr. Charles O. Linder.)

A. That was the answer to the question, what I understood the question at that time.

Q. Is that answer right or wrong?

Mr. PLUMMER.—Just a moment, that is not impeachment at all.

The COURT.—Excepting he used the term cocaine.

Mr. GARVIN.—I asked the question if he did prescribe any cocaine and he says no.

Mr. PLUMMER.—He does not say he did there either, if you read the whole testimony you see the effect of that testimony is if he gave that much it would not affect her anyhow.

The COURT.—Proceed with the examination.
[114—85]

Mr. GARVIN.—Q. Doctor, you testified that you were in the employ, or rather in the service of the Government. What is your capacity as a Government medical officer, what did your services consist of in behalf of the Government during the war, what did you do? A. At home?

Q. Well, at any place?

A. Well, I served first, this brings me into the Spokane Vigilance Corps of the American Defense Society in the first place.

Q. What did you—

Mr. PLUMMER.—Let him finish.

A. I was the organizer of this Spokane Vigilance Corps, American Defense, and executive secretary, and we had more than two hundred patriotic Spokane citizens as members. My work during that

(Testimony of Dr. Charles O. Linder.)

time consisted mostly in discovering disloyalty to America, and instruct the uninformed to loyalty to America, and encourage every enterprise that would assist in winning the war.

Mr. GARVIN.—Q. I see, Doctor, but you were never in real service, you were not actually in the army, were you?

A. No. I was not in the world war, I was nearly two years in the Spanish War.

Q. I understand that, Doctor; I mean this last service.

Mr. PLUMMER.—He was too old, the same as I am.

A. They would not let me in. I would have gone, had I been called.

Mr. GARVIN.—Q. Doctor, when you made the hypodermic injections, on what portion of Mrs. Casey's body did you make them, the first time she went into the office?

A. That is pretty hard to remember.

Q. Where do you ordinarily make them, Doctor?
[115—86]

A. I use the upper portion of the arm.

Q. Do you recall the condition of her arm at that time, Doctor? A. I cannot remember.

Q. Doctor, have you ever seen in your experience as a medical man, have you ever had occasion to have addicts come in to your office?

A. Experience of addicts?

Q. Yes, sir, did you ever have any come into your office, those that use hypodermics?

(Testimony of Dr. Charles O. Linder.)

A. I have seen them in the early days, perhaps in 1916 or '17.

Q. Well, you have seen them, haven't you, Doctor? A. Yes, I have seen them.

Q. What is the ordinary condition of the arm of a person who is using narcotics through hypodermic injections through the arm?

A. Well, the arm gets very patchy, a bluish color, a swelling, and you can see the marks from repeated injections.

Q. Doctor, about how long do those marks last?

A. There is cases where they may be an addict and you cannot see the mark at all. They are injected so carefully they do not leave any marks.

Q. Doctor, I have reference to those that use them where the marks are noticeable.

A. I am not quite posted how long the marks are made.

Q. Doctor, what I am trying to get at is this: if there had been any indications on Mrs. Casey's arm of the use of hypodermic needles at that time, would you have noticed it?

A. If there had been, I think I would.

Q. Do you recall any?

A. I do not recall any previous hypodermic injections.

Mr. GARVIN.—I have one or two more questions, I have to go [116—87] through the record, if you have any more redirect.

Mr. PLUMMER.—No, I think I have covered my examination.

(Testimony of Dr. Charles O. Linder.)

Mr. GARVIN.—Q. Doctor, how many trips did that woman make into your office,—two trips?

A. Two times.

Q. Was she there on the third trip, was there any third trip that you recall?

A. No, sir. I never saw her. I saw her once more at her own hotel.

Q. I mean at the office. A. No.

Q. Doctor, the last time that she left, did you give her one of your cards and tell her that you were giving her the card so she would not forget where to come back to?

A. No, sir, nothing like that.

Q. You did not do that? A. No, sir.

Q. Doctor, are you in the habit of giving your patients quantities of narcotics as for instance morphine, we will restrict it to morphine, to take home with them to be self-administered?

A. No, sir, I am not.

Q. Do you recall any other cases that you have did it in, other than this instance? A. Yes, I do.

Q. You know of them, Doctor?

A. That is a cancer case.

Q. I do not care about particular cases, I mean do you recall very many of those cases? What I am trying to find out is why— A. No, sir.

Q. —the exception? A. Very rarely.

Q. Very rarely?

A. Very rarely that I have those cases.

Q. I see.

A. Once in a while we have a cancer case

(Testimony of Dr. Charles O. Linder.)

or some other case that requires it, need repeated narcotics in cases which are peculiar.

The COURT.—Anything further? [117—88]

Mr. GARVIN.—I want to recall him, if the Court will give me permission; I think we can save time. I have one more question.

Redirect Examination.

(By Mr. PLUMMER.)

Q. Dr. Linder, you heard me ask Mrs. Casey while she was on the stand whether or not she called you up just a few days ago, within the last week or ten days again, and wanted you to have her come to see you, or she come to see you, you heard me ask that question? A. Yes, sir.

Q. She said she had no conversation. Just state what the fact is.

A. She called me up over the phone—

Q. How long ago?

A. About a month ago, she called me up and said she had a daughter thirteen years old and she would send her to the office and she wanted me to give her daughter ten dollars, which I absolutely declined to do. And later on she called me up again and wanted to see me, a week ago, says, "I have been served with a search paper, I have to appear against you," and wanted to see me immediately, or she wanted me to send a man up there.

Q. She had a paper from the court?

A. Yes, sir.

(Testimony of Dr. Charles O. Linder.)

Q. And wanted you to see her before she got into court?

A. Yes. Talking over the phone, she appeared perfectly sober.

Mr. PLUMMER.—That is all.

Witness excused. [118—89]

Testimony of Dr. Erich Richter, for Defendant.

DR. ERICH RICHTER, called as a witness by the defendant, being first duly sworn, testified in his behalf as follows:

Direct Examination.

(By Mr. PLUMMER.)

The COURT.—I assume that the controversy is more over what this woman told the man than what the treatment should be. I do not suppose the Government will claim that the treatment was improper.

Mr. GARVIN.—Yes, we are making both contentions.

The COURT.—You won't get far with one of them.

Mr. PLUMMER.—Q. Doctor, you are a physician and surgeon, a regular practitioner in this county and state, and duly licensed to practice medicine and surgery? A. I am.

Q. And have been for a great many years?

A. Yes, sir.

Q. You heard Dr. Linder's testimony with reference to his investigation of this woman when she came into his office, and I will ask you to state as

(Testimony of Dr. Erich Richter.)

briefly as possible from what she told him, and what he discovered by his examination, if his conclusion from a preliminary examination was justified, what he found there at that time as to conditions of ulcer or cancer.

A. I believe when a patient comes in a physician's office and complains about pain he speaks the truth. I would infer if he did complain about pain, you would not try to cheat a doctor, and he has all simulating symptoms, if the patient tells me he has pain I believe he has pain and if they give me the location of the pain, I try to prove by examination what kind of disease would make that pain, and if the pain seems excruciating, I believe it is the duty of every physician to relieve that pain. [119—90]

Q. And assume, Doctor, she had the pains she complained of there, as the doctor testified, and they were of such magnitude as to need immediate relief, how would you, in prescribing for her under those same conditions, what would you give her?

A. I would give her a hypodermic of narcotics, say morphine, because it works the quickest. If a person has pain and takes narcotic by mouth, we know that pain itself retards the absorption of medicine, and the medicine does not work, or at least very readily, and the hypodermic is the quickest way.

Mr. PLUMMER.—That is all.

(Testimony of Dr. Erich Richter.)

Cross-examination.

(By Mr. GARVIN.)

Q. You have been practicing here for a great many years, haven't you? A. I have.

Q. Doctor, in the ordinary practice, is it customary to give a patient say compound mixtures containing morphine to be self-administered.

The COURT.—I know a dentist has given them to me once or twice.

A. It all depends on circumstances. If I am attending a patient at night-time, and know it is hard for them to get to a drug-store, I would leave a tablet or so of morphine; in the day time I would not do it, I would write a prescription.

Q. Ordinarily, you would write a prescription, that is the usual method?

A. I would give a hypodermic in the office and then write a prescription.

Q. Would you give her one or two or three to take home with her, if it was occasional visits, within say a period of forty-eight hours, would you give her quantities of morphine to [120—91] take home with her.

A. I would not do that myself.

Mr. GARVIN.—That is all, Doctor.

The WITNESS.—Others may do it; I won't.

Mr. GARVIN.—That is all.

Redirect Examination.

(By Mr. PLUMMER.)

Q. Giving her a prescription to go to the drug-store and buy it, would be, according to your pro-

(Testimony of Dr. Erich Richter.)

fession, just the same as handing it to her yourself, as far as the facts are concerned?

A. It would be the same.

Q. In other words he has them on hand and you would not; that is all there is to that. That is all, Doctor.

Witness excused. [121—92]

Testimony of Dr. C. E. Grove, for Defendant.

DR. C. E. GROVE, called as a witness by the defendant, being first duly sworn, testified in his behalf as follows:

Direct Examination.

(By Mr. PLUMMER.)

Q. Doctor, you are a regularly practicing physician, licensed?

Mr. GARVIN.—I will admit his qualifications.

Mr. PLUMMER.—Q. And you heard the question I asked Dr. Richter here, and you heard the testimony of Dr. Linder as to what he saw there and what was told to him on the two visits. I will ask you whether or not, under those circumstances and conditions, and assuming Dr. Linder testified truthfully, whether or not his treatment under the circumstances was according to the usages of the profession in this community? A. It was.

Mr. PLUMMER.—Take the witness.

Cross-examination.

(By Mr. GARVIN.)

Q. After you made that examination, what would be the usual treatment, the hypodermic?

(Testimony of Dr. C. E. Grove.)

A. If the patient was suffering intense pain, a hypodermic injection would be the ordinary treatment for any relief of pain.

Q. Doctor, in the ordinary practice of your profession, is it customary to give a patient compound mixtures containing morphine to be self-administered by the patient? A. It is not.

Mr. GARVIN.—That is all. [122—93]

Redirect Examination.

(By Mr. PLUMMER.)

Q. They sometimes give them a tablet or two to take at times? A. That is true.

Recross-examination.

(By Mr. GARVIN.)

Q. If you were to prescribe narcotics, other than the injections you were to give in your office, what is the ordinary and customary method of administration or prescribing?

A. Well, if a doctor would think it necessary to give the patient an additional dose to take after leaving the office, the ordinary method would be by mouth, because most patients would not be supplied with a hypodermic syringe.

Q. And in case you wanted to have a quantity on hand, is it customary to deliver them to take from the office, or write a prescription?

Mr. PLUMMER.—Just a moment.

The COURT.—I do not know whether there is any custom about it or not. One doctor may run his own drug-store, and another may not carry any drugs at all.

(Testimony of Dr. C. E. Grove.)

Mr. GARVIN.—The purpose of the Act is to prevent just conditions of this kind, and what I am trying to find out, if it is ordinary and customary for a doctor to give—

The COURT.—A doctor does not violate the law and takes no chance whatever, if he gives drugs to you or me for medical purposes. It is only when he gives them to an addict.

Mr. PLUMMER.—Knowing them to be an addict.

The COURT.—What in the world is the difference between getting a drug through the drug-store and getting it from the [123—94] Doctor? You admit yourself it is a question of good faith.

Mr. GARVIN.—If the Court please, I am willing to admit generally that this whole case depends upon the good faith of the prescribing doctor.

The COURT.—It certainly does.

Mr. GARVIN.—I think the evidence is totally competent to bring out the fact as to what the ordinary physician does.

The COURT.—You can ask the Doctor whether there is any uniform rule on the subject or not.

Mr. GARVIN.—Q. Doctor, will you state what the ordinary practice is in reference to the prescribing—or the word prescribing, I did not want to lead you to say prescription or anything like that, but I mean in the administration of narcotic drugs.

A.—There is no uniform rule in regard to that. Different physicians have different practices in that regard, but no physician would feel justified in giv-

(Testimony of Dr. C. E. Grove.)

ing any large amount of narcotic, or prescribing any large amount of narcotic.

The COURT.—What would you call a large amount?

The WITNESS.—Well, I will say more than one or two additional doses. Take morphine, for instance, the ordinary dose hypodermically would be a quarter of a grain, and a physician might readily give one or two or possibly three tablets to be self-administered, but I would say that would be the limit. I should not think he would be justified in giving more than that.

Mr. GARVIN.—That is all.

Witness excused.

Mr. PLUMMER.—Dr. Hansen. I have several more.

The COURT.—I think all of the doctors in town will agree on [124—95] these general propositions. I do not see the necessity of taking up the time of the Court, unless you are going to convert it.

Mr. PLUMMER.—As long as the Court has ruled on it—

The COURT—I will let the Doctor take the stand. I will limit it to three.

Testimony of Dr. Ralph Hansen, for Defendant.

DR. RALPH HANSEN, called as a witness by the defendant, being first duly sworn, testified in his behalf as follows:

Direct Examination.

(By Mr. PLUMMER.)

Q. Doctor, you are a regularly practicing physician and surgeon in this community, and have been for a great many years, in this city, haven't you?

A. Yes, sir.

Mr. GARVIN.—No question about his qualifications.

Mr. PLUMMER.—Q. You heard the testimony of Dr. Linder of the pain she complained of, and what he discovered upon his own examination and her general condition, I will ask you to state whether or not under those circumstances his treatment and the amount of stuff he administered to her was according to the practice of the physicians in this community and considered usual, good practice among physicians? A. I should say so.

Mr. PLUMMER.—Take the witness.

Cross-examination.

(By Mr. GARVIN.)

Q. Doctor, if a patient should come to you within a period of forty-eight hours, a patient you had never seen before, and [125—96] you made a cursory examination of her, and came to the conclusion the Doctor reached in this case, in addition to giving her hypodermic injections in your office,

(Testimony of Dr. Ralph Hansen.)

would it be your customary practice in addition to that to give her quantities of narcotics, principally morphine, for self-administration?

Mr. PLUMMER.—I think he ought to incorporate with that, assuming that she said to the Doctor that her own regular physician was out of town.

Mr. GARVIN.—There is a dispute as to that.

The COURT.—You can answer the question, Doctor.

A. I should feel justified in giving her a small amount to take care of her for a day or two, until she might complete her examination with her regular physician.

Mr. GARVIN.—Q. That is, Doctor, have you reference both for the purposes of self-administration and the hypodermic injection?

A. Well, I would not expect her to be provided with means of hypodermic injection, no.

Q. You would not give them for self-administration? A. No.

Q. You would, not would not?

A. I would not, no. They should be given, if it is hypodermically, it should be given by somebody else, by a graduate nurse or something like that.

Q. Would you give her any for self-administration?

The COURT.—Internally?

A. Yes, I think I should, in case the pain occurred very severely she might not be under necessity of hunting up a doctor or disturbing one in the middle of the night. [126—97]

(Testimony of Dr. Ralph Hansen.)

Mr. GARVIN.—Q. Is it the ordinary and customary practice to give them out of the office, Doctor, or prescribe them, by prescription?

A. A large percentage of the doctors prescribe. A few in the remote districts have to carry their own drugs.

Q. I mean taking into consideration the city, in Spokane?

A. There are not but very few have their own drugs. They have the privilege.

Mr. GARVIN.—That is all.

Mr. PLUMMER.—That is all.

Witness excused. [127—98]

Testimony of E. F. Van Dissell, for Defendant.

E. F. VAN DISSELL, called as a witness by the defendant, being first duly sworn, testified in his behalf as follows:

Direct Examination.

(By Mr. PLUMMER.)

Q. Please state your name, Mr. Van Dissell.

A. E. F. Van Dissell.

Q. And you are the president and general manager here of the Phoenix Lumber industry here in the city? A. Yes, sir.

Q. And quite prominent in the business affairs of the city and have been for several years. I know your modesty might prevent you from answering that. I will ask you if you know Dr. Linder here, the defendant in this case? A. Yes, sir.

Q. How many years have you known him?

(Testimony of E. F. Van Dissell.)

A. The last twelve or fifteen years.

Q. Do you know his reputation in this community for being a law-abiding citizen, and upright and square and honest and truth and veracity also?

A. Yes, sir.

Q. State whether or not that is good or bad?

A. It is very good.

Mr. PLUMMER.—Take the witness.

Mr. GARVIN.—That is all.

Witness excused. [128—99]

Testimony of E. R. Ennis, for Defendant.

E. R. ENNIS, called as a witness by the defendant, being first duly sworn, testified in his behalf as follows:

Direct Examination.

(By Mr. PLUMMER.)

Q. Mr. Ennis, please state your name to the Court and jury. A. E. R. Ennis.

Q. Mr. Ennis, you are the county treasurer of this county and have been for the last two years?

A. Four years.

Q. Do you know Dr. Linder, the defendant in this case? A. I do.

Q. Do you know his reputation for truth and veracity and honesty and being an upright citizen or otherwise? A. Yes, sir.

Q. State whether or not that is good or bad?

A. It is very good.

Mr. PLUMMER.—Take the witness.

Mr. GARVIN.—That is all

Witness excused. [129—100]

Testimony of Conner Malott, for Defendant.

CONNER MALOTT, called as a witness by the defendant, being first duly sworn, testified in his behalf as follows:

Direct Examination.

(By Mr. PLUMMER.)

Mr. GARVIN.—A character witness, also?

Mr. PLUMMER.—Yes, sir; and I can get a dozen, if you want them.

The COURT.—I will limit you to three.

Mr. PLUMMER.—Q. Mr. Malott, you are in the financial business in this city, and have been for several years, have you? A. Yes, sir.

Q. Handle stocks and bonds and that class of work? A. Yes, sir.

Q. Do you know Dr. Linder? A. Yes, sir.

Q. How long have you known him?

A. Since 1892.

Mr. GARVIN.—I will admit that he will make the same answer as the other witnesses.

Mr. PLUMMER.—That is all; come down.

Mr. GARVIN.—If you will name your other witnesses, I will make the same admission as to those.

Witness excused. [130—101]

Testimony of Virginia Hoganson, for Defendant.

VIRGINIA HOGANSON, called as a witness by the defendant, being first duly sworn, testified in his behalf as follows:

Direct Examination.

(By Mr. PLUMMER.)

Q. Please state your name.

(Testimony of Virginia Hoganson.)

A. Virginia Hoganson.

Q. And were you at one time Dr. Linder's office girl? A. I was.

Q. For how long? A. About a year.

Q. And up until what time?

A. Up until the 1st of March.

Q. This year? A. This year, yes.

Q. I will show you a small vial here, a small bottle, marked Government's Exhibit No. 2, and ask you—this is the bottle the lady testified was given her by Dr Linder with certain narcotics in it—I will ask you if Dr. Linder ever had a bottle during the time you worked there of that size or character in his office? A. No, he did not.

Q. When he would give out medicines to his patients, you were there as the office girl and knew what he done, and what he gave out?

A. Yes, I did.

Q. And I will ask you whether or not he always gave them in envelopes marked Government's Exhibit 1? (Defendant's Exhibit 11.)

Mr. GARVIN.—I object to that.

The COURT.—She could not testify what was always done.

A. During the time I was there he always gave them in envelopes like that.

Mr. PLUMMER.—Q. And you know that from seeing him doing it? [131—102] A. Yes.

Mr PLUMMER.—Take the witness.

(Testimony of Virginia Hoganson.)

Cross-examination.

(By Mr. GARVIN.)

Q. You say you have been there for a year ending the 1st of March? A. Yes, sir.

Q. Were you quite familiar with the office?

A. I was.

Q. Do you know where he kept his medicine in different vials? A. Yes, I did.

Q. You had occasion to examine them all?

A. I did not have occasion to examine them all. I knew where they were, if he asked me for them.

Q. I mean your duties was professional duties, to brush up, you came in contact with them that way?

A. Yes, it was.

Q. And how often would you do that?

A. Why, I do not know how often it was. I did not dust up everything.

Q. You had a pretty general knowledge of everything that was in that office? A. Yes, I did.

Q. Now, would you say that that particular bottle was not in there on the first day of March, when you left?

A. I know there was not any bottle as small as that the day I left.

Q. You are positive and certain of that?

A. I am positive of it.

Q. During the year you were there, did the doctor administer any drugs to anyone?

A. I do not know anything about that. [132—103]

Q. By the word drugs I did not mean narcotics.

(Testimony of Virginia Hoganson.)

You testified a moment ago that the doctor always gave out whatever medicines he gave to his patients in an envelope of that kind? A. Yes.

Q. Did he ever give any in bottles?

A. No, he never did. Not that I know of.

Q. Did you always watch him give medicines out? A. Not always; no.

Q. There could have been occasions when he gave out medicines in bottles and you would not know anything about it?

A. I do not know anything about that. All I saw him give was in envelopes.

Q. You never seen him give except in an envelope? A. Nothing except in envelopes.

Mr. GARVIN.—That is all.

Redirect Examination.

(By Mr. PLUMMER.)

Q. But you never saw any bottles of that size, either empty or otherwise in the office, did you?

A. No, I did not.

Mr. PLUMMER.—That is all.

Mr. GARVIN.—That is all.

Witness excused. [133—104]

Testimony of O. E. Bender, for Defendant.

O. E. BENDER, called as a witness by the defendant, being first duly sworn, testified in his behalf as follows:

Direct Examination.

(By Mr. PLUMMER.)

Q. Your name is O. E. Bender?

(Testimony of O. E. Bender.)

A. O. E. Bender.

Q. And you are an officer and interested in the Idaho Gold & Ruby Mining Company, this big placer company up here? A. Yes, sir.

Q. I will ask you whether or not you were in Dr. Linder's office on the 30th day of March, 1922, this year? A. I was.

Q. In there waiting to see the Doctor, was it?

A. I was in there waiting treatment.

Q. And I will ask you if you recognize this woman who was on the stand, and who is now sitting over here, Mrs. Casey? A. I do.

Q. Did you see her on that day? A. Yes, sir.

Q. I will ask you if you saw her when she was under examination, you being in the other room and seeing her examined in some way?

Mr. GARVIN.—I am going to object to that question. It may have a different purpose but the question is whether or not he saw her under examination. Unless he can place the witness as being in the room where the examination was made, I do not think it is competent.

Mr. PLUMMER.—He can see through the door.
[134—105]

The COURT.—He can state what he saw.

Mr. PLUMMER.—Just tell what you did see, in the way of the Doctor examining her.

A. This lady walked into the office, and I seen him take her into the back room where he does the examining and has the tables, and then I seen her coming out.

(Testimony of O. E. Bender.)

Q. You did not see what was going on inside?

A. No, no more than he was talking to her a great length of time, and then I heard her make the statement—

Q. I will have to ask you that direct. I will ask you whether or not the Doctor said to her when they were coming through the door, in substance and effect, that the Doctor said he thought she had some malignant growth, might be ulcer or cancer, he said he could not be certain after only one preliminary examination; that the Doctor told her to go to her own doctor as Dr. Linder did not care to have her case?

A. He told her that twice.

Q. In your presence and hearing, where she could hear it? A. Yes, sir.

Mr. PLUMMER.—That is all.

Cross-examination.

(By Mr. GARVIN.)

Q. What was your relative position in the office to Dr. Linder and Mrs. Casey?

A. What do you mean, "your location"?

The COURT.—How close were you?

The WITNESS.—About four feet through the partition. I could see right through the glass door, and hear them talking.

Mr. GARVIN.—Did you ever see Mrs. Casey before? A. Never.

Q. Did you ever see her afterwards?

A. No, sir. [135—106]

(Testimony of O. E. Bender.)

Q. Are you certain it was her? A. Yes, sir.

Q. What makes you certain?

A. Because my two eyes do not fail me.

Q. What was her condition?

A. She was rather haggard and worn-looking, as though she was in pain.

Q. Was she dressed as she is now? A. No, sir.

Q. What time of day was it?

A. I do not remember the hour. It was about midday.

Q. About noon, one o'clock or eleven?

A. I would presume it was about that.

Q. Do you recall how she was dressed?

A. She was not dressed as fine as she was right now.

Q. How often do you go to the Doctor's office?

A. Whenever I need attention.

Q. About how often, that is what I am trying to get at.

A. I have been in there from once to two or three times a month.

Q. Mr. Bender, did you go by appointment, or just drop in? A. I go in right to his office.

Q. Do you recall on this particular occasion whether you were there by appointment, or just dropped in? A. I just dropped in.

Q. Was there anybody in the office?

A. Yes, sir.

Q. Is there any way you can recollect and fix the time you were in the office on that particular day?

A. No, it is pretty hard to state the hour.

(Testimony of O. E. Bender.)

Mr. GARVIN.—That is all. [136—107]

Redirect Examination.

(By Mr. PLUMMER.)

Q. You are a man of family, and he has treated yourself and family for sometime?

A. For five years.

Mr. PLUMMER.—That is all.

Mr. GARVIN.—That is all.

Witness excused. [137—108]

Testimony of William Peper, for Defendant.

WILLIAM PEPER, called as a witness by the defendant, being first duly sworn, testified in his behalf as follows:

Direct Examination.

(By Mr. PLUMMER.)

Q. Mr. Peper, just give your name, let the reporter get it here. A. William Peper.

Q. I will ask you if you were in Dr. Linder's office on April 1st, this year? A. Yes, I was.

Q. And do you recall this woman who testified here and is sitting here on a bench, Mrs. Casey, as having seen her on that day there?

A. Yes, I have.

Q. Did you see her after she came out of the Doctor's office?

A. I was in the Doctor's office, sitting in the reception-room, and she came out of a private room.

Q. When she came out, state what she had in her hand. A. She had a paper envelope.

(Testimony of William Peper.)

Q. I will show you one and ask you if that is similar? A. Some; something like that.

Q. Did you see her have any bottle at all like this? A. No, I did not.

Mr. PLUMMER.—That is all.

Cross-examination.

(By Mr. GARVIN.)

Q. What time was that, Mr. Peper?

A. That was about four o'clock in the afternoon, as near as I can give it.

Q. It was on Saturday afternoon?

A. It was on Saturday afternoon.

Q. You were sitting in the reception room?
[138—109]

A. I was sitting in the reception-room.

Q. How close were you to Mrs. Casey, when she came out? A. About from this man over here.

Q. Where did she have this particular package?

A. She had it in her left hand and tried to put it away some place.

Q. Did she have a purse?

A. I could not say. She kind of worked in her purse, it seemed like she was going to put it away in her pocket.

Q. Have you been a patient of Dr. Linder for some time? A. Yes, I have.

Q. You have seen a number of patients coming out of his office? A. Yes, sir.

Q. You have noticed them coming out with envelopes? A. Yes, sir.

(Testimony of William Peper.)

Q. What was there about this particular envelope that attracted your attention to it?

A. This woman looked kind of sickly and kind of overstooped, like she was suffering.

Q. Did you notice whether she had a coat on?

A. She had a kind of a cape, I do not know just exactly how to explain it.

Q. About the only thing you remember is that she had this envelope in her hand. Were you in position to see whether or not she had anything else in her hand? A. I do not know.

Q. Could she have had anything else in her hand?

Mr. PLUMMER.—Just a moment; that is asking for a conclusion.

Mr. GARVIN.—Q. You say that is the only thing she had in her hand, Mr. Peper?

A. Well, that is all that drew attention to me.

Mr. GARVIN.—That is all.

Witness excused. [139—110]

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Testimony of M. Chaikem, for Defendant.

M. CHAIKEM, called as a witness by the defendant, being first duly sworn, testified in his behalf as follows:

Direct Examination.

(By Mr. PLUMMER.)

Q. Mr. Chaikem, your name is M. Chaikem?

A. Yes, sir, M. Chaikem.

Q. Were you in Dr. Linder's office on April 1st?

(Testimony of M. Chaikem.)

A. Yes, sir.

Q. At the time they made the raid there, the officers did? A. I was in there.

Q. And they made the raid? A. Yes, sir.

Q. Just before that was done, did you see this woman coming out of Dr. Linder's private office?

A. Yes, sir.

Q. What did she have in her hands, if anything, that you saw?

A. At the time of going out, she had a small envelope.

Q. I show you this envelope, and ask you if this—

A. I did not pay any attention to that, but she had an envelope.

Q. About that size? A. Yes, sir.

Q. Did you see any bottle in her hand?

A. No, sir.

Mr. PLUMMER.—Take the witness.

Cross-examination.

(By Mr. GARVIN.)

Q. Do you recall seeing anything else in her hand? A. I do not remember.

Q. Did she have a purse in her hand?

A. I know she had nothing at all, just a small envelope, she was going out and had that in her hand. [140—111]

Q. That was the only thing you noticed?

A. Yes, sir.

(Testimony of Mrs. Chaikem.)

Q. Could she have had other things in her hand?

Mr. PLUMMER.—That is a conclusion.

Witness excused.

Testimony of Mrs. Chaikem, for Defendant.

Mrs. CHAIKEM, called as a witness by the defendant, being first duly sworn, testified in his behalf as follows:

Direct Examination.

(By Mr. PLUMMER.)

(Mr. Chaikem sworn to act as interpreter.)

Mr. GARVIN.—To save time, if the testimony is going to be the same—

Mr. PLUMMER.—Just the same, exactly.

Mr. GARVIN.—And I suppose the cross-examination the same, she was not in position to see.

Mr. PLUMMER.—She was in position to see, and that is all she saw.

Witness excused.

Mr. GARVIN.—I am going to ask counsel if they are going to make any attempt to introduce the other narcotic register?

Mr. PLUMMER.—I have not had any chance to talk to my client. If it is available, we will get it.

Mr. GARVIN.—I would like it, if it is available.

Mr. PLUMMER.—Of course. [141—112]

REBUTTAL.

Testimony of Dr. Frederick Epplen for the Government (in Rebuttal).

DR. FREDERICK EPPLEN, called as a witness by the United States, being first duly sworn, testified in its behalf, in rebuttal, as follows:

Direct Examination.

(By Mr. GARVIN.)

Mr. PLUMMER.—We will admit his qualifications.

Mr. GARVIN.—Q. Doctor, you have been practicing here for a number of years? A. I have.

Q. I am going to say that assuming that a party whom you had never seen before came to your office between the 30th day of April and the 1st day of—or the 30th day of March and the 1st day of April, that would be the 31st day of March intervening, came to your office and you made a cursory examination of her condition and came to the conclusion that she was either suffering from ulcers or maybe a cancerous condition of the stomach, what would be the ordinary treatment under a condition of that kind?

A. I would not treat a patient after a cursory examination. I would determine as definitely as possible whether she had it or not.

Q. Doctor, if she was claiming to have severe pains, would you prescribe narcotics?

A. If I thought it was an indurable cancer I might prescribe narcotics.

(Testimony of Dr. Frederick Epplen.)

Q. Now, to relieve pains, would you prescribe narcotics?

A. If she had a very severe pain, I would give her a dose of morphine.

Q. How would you give it?

A. I would give it hypodermically. [142—113]

Q. Would you give her any tablets of morphine and scopolamine, mixed, quarter grain tablets, to be self-administered? A. I would not.

Q. And what is the ordinary and customary manner of prescribing—by the word prescribing I mean administering generally, or use of narcotics—to patients by a physician?

A. Under those circumstances it would be not permissible to prescribe it under any circumstances, unless we could demonstrate that the condition was an indurable cancer and could not be relieved, then we would be permitted to prescribe for it, for the relief of pain, by prescription.

Q. By prescription? A. Yes, sir.

Q. Would you give cocaine, Doctor, to a patient suffering from a condition of that kind, to be taken internally? A. No, sir.

Mr. PLUMMER.—We do not make any claim that he was justified in giving cocaine, or did give any.

Mr. GARVIN.—You may cross-examine.

Cross-examination.

(By Mr. PLUMMER.)

Q. Doctor, in the practice of your profession, I suppose, like the legal profession, doctors do not

(Testimony of Dr. Frederick Epplen.)

always agree on just what is the best treatment under emergency cases, they do not all agree on those things?

A. Well, that would be humanly impossible.

Q. Of course that is true, and what you might think would be the best thing to do, some other physician equally as able, might have a different opinion, is not that true?

A. Under certain conditions, there might be different [143—114] opinions, yes, sir.

Q. If a woman came to your office and appeared to be suffering pain, and exhibited symptoms to you that she might be suffering from ulcer of the stomach or cancer, and needed immediate relief on account of the fact that she was a nurse and had to work at her business, and had to have some relief, would you give her a hypodermic injection of morphine, to relieve the pain temporarily?

A. I might, if I thought the pain was genuine.

Q. That is what I mean, good faith in every way

A. Yes, sir.

Q. And if she had to follow her profession and go out nights, when it might be difficult to get to a doctor, you might give her one or two tablets to take when the pain started in again, until she could see her own doctor?

A. No, I would not, because it is not permitted.

Q. I am saying what you would do in case it was permitted? A. I would not give it to her.

Q. But other doctors might?

(Testimony of Dr. David H. Ransome.)

A. I presume some might; yes, sir.

Mr. PLUMMER.—That is all.

Witness excused. [144—115]

Testimony of Dr. David H. Ransome, for the Government (In Rebuttal).

DR. DAVID H. RANSOME, called as a witness by the United States, being first duly sworn, testified in its behalf, in rebuttal, as follows:

Direct Examination.

(By Mr. GARVIN.)

Q. You are the city physician here, are you, Doctor? A. Assistant.

Q. Doctor, did you hear the question that I propounded a few moments ago to Dr. Epplen?

A. I did.

Q. In reference to the first case now, where a party was to come to your office, and assuming that you made a cursory examination of her and came to the conclusion that she was either suffering from a cancerous or ulcerous condition of the stomach, would you prescribe under those conditions the use of morphine mixed with scopolamine?

A. I might, if she were in severe pain.

Q. Would you give her tablets, Doctor, to be self-administered? A. No.

Q. Doctor, how would you administer the narcotics, if you were to administer them?

A. Hypodermic.

Q. Doctor, in a local internal condition such as

(Testimony of Dr. David H. Ransome.)

cancerous or ulcerous condition, would you prescribe cocaine? A. No.

Q. Why not, Doctor?

A. Well, cocaine has merely a local effect. It anesthetizes where it touches. It is too local in its effect to have any great effect on pain.

Q. What, if any, effect would cocaine have if taken internally for a condition of that kind?

A. Well, cocaine has been used at times for nausea, and occasionally used before [145—116] using a stomach tube, to anesthetize the esophagus and perhaps the stomach, so there won't be vomiting during the administration of medicines, or the relief of the stomach of its contents through a stomach tube.

Q. Doctor, are you acquainted and familiar with one Ida Casey? A. Yes, sir.

Q. Who is she, Doctor? A. Well—

Mr. PLUMMER.—I do not know that that is rebuttal.

Mr. GARVIN.—I think it is.

Q. Doctor, have you ever had occasion to treat her? A. Yes.

Q. When, Doctor?

A. We have treated her a number of times in the city jail. We treated her, I think the last time she was in was along in the spring, April and May she was in the jail.

Q. And at the time she was in the jail, what did you treat her for, in April?

A. Narcotic addiction.

(Testimony of Dr. David H. Ransome.)

Q. Doctor, from a general—to the ordinary physician practicing medicine, Doctor, is her general appearance such that it would indicate the fact she is an addict?

Mr. PLUMMER.—Just a minute, that is objected to.

The COURT.—I think it is a proper question for a physician.

Mr. PLUMMER.—Exception. A. It would.

Mr. GARVIN.—Q. And have you ever had occasion to examine her arms? A. I have.

Q. What was the condition of her arms in April, 1922?

Mr. PLUMMER.—Just a moment; I object to that as not rebuttal. She testified herself the Doctor saw her arms all [146—117] marked up.

The COURT.—The Government cannot anticipate what the testimony would be. I will overrule the objection.

Mr. PLUMMER.—Exception.

Mr. GARVIN.—Q. You may answer, Doctor.

A. Her arm shows use of hypodermic injections over a considerable period of time.

Q. About approximately how long, would you say? A. I could not tell you.

Q. I mean is it a question of months or longer?

A. I think, as I remember it, it was a matter of years.

Q. And, Doctor, would the ordinary physician and surgeon, if he were to make an examination of

(Testimony of Dr. David H. Ransome.)

that arm for the purpose of making a hypodermic injection, would it be noticeable? A. Oh, yes.

Mr. GARVIN.—That is all.

Cross-examination.

(By Mr. PLUMMER.)

Q. How long do the marks last?

A. Sometimes last for years.

Q. Sometimes only last for months, depends upon how they are put in? A. Well, it depends, yes.

Q. You do not remember seeing her?

A. Oh, yes.

Q. In March, or any sooner than the last part of April, do you? A. My records show April 12th.

Q. That is the first time you had seen her?

A. I had seen her before that.

Q. I mean as far as examinations were concerned?

A. She has been down there before. [147—118]

Q. How do you fix the time as April 12th?

A. I merely looked up my records.

Q. You did not examine her on that date?

A. Probably the next two or three days. I remember the incident. She came of her own free will this time, she wanted to be treated.

Q. She so said?

A. Well, the Judge committed her, I think, for sixty days and a hundred dollars, and as my habit of releasing them from treatment at the end of thirty days—

Q. You are getting away from my question, Doctor. When do you have any independent recollec-

(Testimony of Dr. David H. Ransome.)

tion, yourself, of having seen her arm, what time that was, if you have any independent recollection?

A. No, I could not say.

Q. You treat lots of those people?

A. Probably several hundred in a year or so, and probably in a year.

Q. You do not have any independent recollection of her?

A. I merely remember Ida Casey. She is a character. I remember the condition of her arms. She has a great many old, blue marks on her arms.

Q. On which arm?

A. I think perhaps on her legs, too. She is an old case.

Q. You do not know whether there are any on her legs or not? A. No, I do not.

Q. You are just guessing at that?

A. I know she has marks pretty well distributed over her. She is one of our old cases.

Q. How long had you had her before this 12th day of April?

A. I do not remember that. That is the first record I have [148—119] of this time, and she was there for at least a month after that time.

Q. After that time? A. Yes, sir.

Q. You do not know the condition her arm was in on the 1st day of April, when Dr. Linder examined her, do you? A. No.

Mr. PLUMMER.—That is all.

Mr. GARVIN.—That is all.

Witness excused.

Mr. GARVIN.—That is all.

Mr. PLUMMER.—If your Honor please, I would like to suggest one thing, so that the Court can be considering it during the argument with reference to instructions to the jury, I want to refer your Honor—I will hand the case up to your Honor—to the case of United States vs. Maurice Overman, decided March 7th, 1922.

Mr. GARVIN.—I might call the Court's attention to these cases.

(Authorities handed to the Court.)

(Argument by Mr. Garvin.)

(Argument by Mr. Plummer.)

(Thereupon an adjournment was taken until 9:30 A. M. of the following day, Tuesday, October 10, 1922, at which time the trial was resumed and the following proceedings were had.) [149—120]

9:30 A. M. Tuesday, October, 10, 1922.

(Argument concluded by Mr. Plummer.)

(Reply by Mr. Garvin.)

Charge to Jury.

The COURT.—The indictment in this case contains three counts. The first count charges that on the 30th day of March, 1922, in this Division of the District, the defendant did violate the Act of December 17, 1914, entitled "An Act to Provide for the Registration of, with Collectors of Internal Revenue, and to Impose a Special Tax upon all persons who produce, import, manufacture, compound, deal in, dispense, sell, distribute, or give away opium or cocoa leaves, their salts, derivatives, preparations, and for other purposes," as amended

February 24, 1919, in that he did then and there knowingly, wilfully and unlawfully sell, barter and give to Ida Casey a compound, manufacture and derivative of opium, to wit: a quantity of morphine, the exact amount being to the Grand Jurors unknown, not in pursuance of any written order of Ida Casey on a form issued for that purpose by the Commissioner of Internal Revenue of the United States; that the defendant was a duly licensed physician and registered under the Act; that Ida Casey was a person addicted to the habitual use of morphine and cocaine and known by the defendant to be so addicted; that Ida Casey did not require the administration of morphine by reason of any disease other than such addiction; that the defendant did not dispense any of the morphine for the purpose of treating any disease or condition other than such addiction; that none of the morphine so dispensed by the defendant was then and there [150—121] administered to or intended by the defendant to be administered to Ida Casey by the defendant or any nurse, or person acting under the direction of the defendant; nor was any of the morphine then and there consumed or intended to be consumed by Ida Casey in the presence of the defendant, but that all of the morphine was put in the possession or control of Ida Casey with the intention on the part of the defendant that Ida Casey would use the same by self-administration in divided doses extending over a period of time, the amount of morphine dispensed being more than sufficient or necessary to satisfying the craving of

Ida Casey therefor if consumed by her all at one time; that Ida Casey was not in any way restrained or prevented from disposing of the morphine in any manner she saw fit and that the morphine so dispensed by the defendant was in the form in which said drugs are usually consumed by persons addicted to the habitual use thereof to satisfy their cravings therefor and were adapted for consumption. Contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

The second count is in all respects similar to the first, except that it relates to a similar transaction two or three days later.

The third count charges that the defendant dispensed these drugs and failed to keep the written record required by law.

To the three counts of the indictment the defendant has interposed a plea of not guilty. That plea places in issue every material averment of the indictment and casts upon the Government the burden of proving every such averment to your satisfaction and beyond a reasonable doubt. [151—122]

A reasonable doubt in this connection is such a doubt as will cause reasonable, prudent and considerate men to hesitate or waiver in the graver and more important concerns of human life before acting upon the truth of the matters charged or alleged. Such a doubt may arise from the evidence or from the lack of evidence. On the one hand you will not be moved or swayed by doubts which are purely imaginary and capricious, and on the other

hand, you will not convict in the face of doubts which are real and substantial. If from a fair and candid consideration of all the testimony you can say upon your oaths as jurors that you have an abiding conviction of the truth of the charge to a moral certainty, then you have no reasonable doubt and should convict. If you have no such moral convictions or if you entertain doubts for which sane and satisfactory reasons can be assigned in your own minds, you must give the defendant the benefit of that doubt and find him not guilty.

I further charge you that the defendant is presumed to be innocent of the crime charged until his guilt is established to your satisfaction and beyond a reasonable doubt. This presumption of innocence accompanies the defendant throughout the trial and stands as evidence in his favor until you are satisfied of his guilt beyond a reasonable doubt, notwithstanding the presumption of innocence with which the law surrounds him.

You, gentlemen of the jury, are the sole judges of the facts in this case and of the credibility of the witnesses. Before reaching a verdict you will carefully consider and compare all of the testimony. You will observe the demeanor of the witnesses upon the stand; their interest in the result of your verdict, if any such interest is disclosed; their knowledge of [152—123] the facts with relation to which they have testified; their opportunity for hearing, seeing or knowing the facts; the probability of the truth of their testimony; their bias or prejudice, or absence of these qualities; their in-

telligence or lack of intelligence; and all the facts and circumstances given in evidence and surrounding the witnesses at the trial.

I further charge you if you find from the testimony that any witness has wilfully testified falsely to any material fact, you are at liberty under the law to disregard the testimony of that witness entirely, except in so far as he or she may be corroborated by other credible testimony or by other known facts in the case.

The indictment in this case is based on Section 2 of the Harrison Narcotic Act. That section declares: "That it shall be unlawful for any person to sell, barter, exchange, or give away any of the aforesaid drugs except in pursuance of a written order of the person to whom such article is sold, bartered, exchanged or given, on a form to be issued in blank for that purpose by the Commissioner of Internal Revenue."

It further provides that: "Nothing contained in this section shall apply—

(a) To the dispensing or distribution of any of the aforesaid drugs to a patient by a physician, dentist or veterinary surgeon registered under this Act in the course of his professional practice only; Provided, That such physician, dentist or veterinary surgeon shall keep a record of all such drugs dispensed or distributed, showing the amount dispensed or distributed, the date, and the name and address of the patient to whom such drugs are dispensed or distributed, except such as may be dispensed—" and so forth. [153—124]

The limits of the rights of the physician under this statute are well defined by the Circuit Court of Appeals of the Fifth Circuit, as follows: "Manifestly the phrases 'To a patient,' and 'In the course of his professional practice only,' are intended to confine the immunity of a registered physician in dispensing the narcotic drugs mentioned in the Act strictly within the proprietary bounds of a physician's professional practice, and not to extend it to include a sale to a dealer or a distribution intended to cater to the appetite or satisfy the craving of one addicted to the use of the drugs." In other words, the main issue in this case is simply this: Were these drugs dispensed in good faith, within the proprietary bounds of professional practice, or were they knowingly dispensed for the purpose of catering to the appetite or satisfying the cravings of one addicted to the use of narcotics? That is the principal question in this case. If you are satisfied beyond a reasonable doubt that defendant knew that this woman was addicted to the use of narcotics, and if he dispensed these drugs to her for the purpose of catering to her appetite or satisfying her cravings for the drug, he is guilty under the law. If, on the other hand, you believe from the testimony that the defendant believed in good faith this woman was suffering from cancer or ulcer of the stomach, and administered the drug for the purpose of relieving her pain, or if you entertain a reasonable doubt upon that question, you must give the defendant the benefit of the doubt and find him not guilty.

The defendant here is not responsible for mere errors of judgment. It is a question of good faith or bad faith. If he honestly believed she was suffering from the illness which he [154—125] testified to here, and gave her the drug for the purpose of relieving pain, he is not guilty, whether he was right or wrong in his conclusion. If, on the other hand, he knew she was an addict, and gave her the drug for the purpose of catering to her appetite or satisfying her cravings, he is guilty under the law.

The quantity of the drug, of course, is not material, except in so far as it may bear upon the good faith of the defendant. If it was a proper dose for medicinal purposes, it would be of less weight against the defendant than if it was a larger quantity, which could not be used for that purpose, but if it was administered for the purpose of catering to her appetite and satisfying her cravings as an addict, the quantity administered or dispensed is not material.

The defendant has offered the testimony of witnesses here as to his good reputation in this community as a peaceable, law-abiding citizen. That testimony is competent and must be considered by you. If you are satisfied beyond a reasonable doubt as to his guilt, of course this previous reputation cannot avail him, but nevertheless you must consider the testimony relating to his reputation in connection with all other testimony in the case, in considering the question of his guilt or innocence, and if all of the testimony raises a reasonable

doubt in your mind, you must give him the benefit of that doubt and find him not guilty.

The third count charges a dispensing of these narcotics without keeping a proper record. A record has been introduced in evidence which satisfies all of the requirements of the law, and if you believe that record was actually kept he is not guilty under the third count. If however, you are satisfied from all [155—126] the testimony, beyond a reasonable doubt, that that record was not kept at or near the time, it will be your duty to return a verdict of guilty as to that count also.

Anything further, gentlemen?

Mr. PLUMMER.—I do not think of anything.

The COURT.—You may retire, gentlemen, and consider of your verdict.

Mr. PLUMMER.—There is just one thing. I think counsel and I can agree upon this, so there can be no mistake upon the part of the jury. As I understand, you claim this small bottle is the one that contained narcotics?

Mr. GARVIN.—That is the one that contained narcotics.

The COURT.—Exhibit 1 was given first, and Exhibit 2 second, as I understand it.

(Thereupon the jury retired to deliberate upon their verdict.) [156—127]

In the District Court of the United States, Eastern District of Washington, Northern Division.

No. 3981.

UNITED STATES,

Plaintiff,

vs.

CHARLES O. LINDER,

Defendant.

Motion in Arrest of Judgment.

Comes now the above-named defendant and moves the Court in arrest of judgment, upon the verdict of the jury in the above-entitled cause, upon the ground and for the reason that the verdict of the jury finding the defendant guilty on the second count in the indictment is wholly inconsistent with the finding of the jury of not guilty of the first and third counts in the indictment, and the action of the jury in finding defendant guilty of the second count in the indictment is not justified by the evidence and especially in view of their finding defendant not guilty upon the first and third counts in the indictment, upon the same evidence.

(Signed) W. H. PLUMMER,
Attorney for Defendant. [157—128]

In the District Court of the United States, Eastern District of Washington, Northern Division.

No. 3981.

UNITED STATES,

Plaintiff,

vs.

CHARLES O. LINDER,

Defendant.

**Motion for Judgment of Acquittal Notwithstanding
the Verdict of the Jury.**

Comes now the above-named defendant, and upon the records, files and proceedings in this cause, and upon the verdict of the jury rendered at the trial thereof, moves the Court of judgment of acquittal and not guilty, notwithstanding the verdict of the jury, upon the grounds and for the reason as follows:

I.

That the verdict of the jury was that the defendant was not guilty of the first count in the indictment; that he was not guilty of the third count in the indictment, that he is guilty of the second count in the indictment.

II.

That by finding the defendant not guilty of the first and third counts in the indictment, he could not be guilty of the second count in the indictment. That the third count in the indictment embraces both the first and second counts in the indictment,

and finding him not guilty of the first and third counts in the indictment is equivalent to finding him not guilty of the second count in the indictment, and that the findings of the jury are inconsistent.

(Signed) W. H. PLUMMER,
Attorney for Defendant. [158—129]

In the District Court of the United States, Eastern District of Washington, Northern Division.

No. 3981.

UNITED STATES,

Plaintiff,

vs.

CHARLES O. LINDER,

Defendant.

Amended Motion for New Trial.

Comes now the above defendant, and files and serves this, his amended motion for new trial, that is to say, should defendant's motion for a judgment notwithstanding the verdict of the jury upon the second count of the indictment, and his motion in arrest of judgment be overruled by the Court, then the Court consider this, his motion for a new trial, upon and the setting aside of the verdict of the jury upon a second count of the indictment in this cause, upon the following grounds, to wit:

I.

Irregularity in the proceedings of the Court and jury, and adverse party, and orders of this Court, and abuse of discretion, by which defendant was prevented from having a fair trial.

II.

Misconduct of the jury.

III.

Accident and surprise, which ordinary prudence could not have guarded against. [159—130]

IV.

Newly discovered evidence, material for the defendant, which he could not with a reasonable diligence have discovered and produced at the trial.

V.

Error in law occurring at the trial. This motion is based upon the records, files and proceedings in this court and the affidavits hereto attached. The errors of the law, occurring at the trial, which defendant specifies are as follows: That it was necessary in order that the Government should maintain its case in chief, that it prove that defendant knew or had reason to believe that the witness, Ida Casey, was a dope addict. That the Government offered the testimony of Ida Casey in which she testified that she notified the defendant on the 30th day of March, 1922, when she first visited him, that she was addicted to the use of narcotics, whereupon the Government closed its case on that subject, and with that testimony, thereafter defendant denied any knowledge of said dope addiction, and thereafter the Court permitted the Government's witness, Dr. Ransom to testify that he had known Ida Casey for several months, that any doctor could tell by the examination of her arms that she was addicted to the use of narcotics by hypodermic injection, said Ransom being the last witness for the

Government in rebuttal. That defendant objected to said testimony, on the ground that it was not rebuttal, and on the ground of surprise. That immediately after Dr. Ransom left the stand the Government rested, and the Court immediately ordered that counsel make their arguments to the jury, the defendant having no opportunity to rebut the evidence of said Ransom, or secure evidence for that purpose.

(Signed) W. H. PLUMMER,
Attorney for Defendant. [160—131]

In the District Court of the United States, Eastern District of Washington, Northern Division.

No. 3981.

THE UNITED STATES OF AMERICA,
Plaintiff,

vs.

CHARLES O. LINDER,
Defendant.

Argument on Motion for New Trial

BE IT REMEMBERED, That the above-entitled cause came on regularly for hearing on motion for a new trial before the Hon. Frank H. Rudkin, District Judge, in the above-entitled court, at 1:45 o'clock, P. M., Thursday, October 26, 1922, the Government appearing by F. R. Jeffrey, United States District Attorney, and by H. Sylvester Garvin, Assistant United States District Attorney, and the defendant appearing in person and by his

attorney, W. H. Plummer, Esq., and thereupon the following proceedings were had and done, to wit:

Mr. PLUMMER.—The affidavits that I am going to read have been heretofore filed, if your Honor please, excepting the one which Dr. Linder has just given me as we came into the courtroom. I did not know this was going to be argued until noon. I have submitted to counsel this affidavit and I believe it is agreed it can be filed *nunc pro tunc*, isn't it, Mr. Garvin?

Mr. GARVIN.—Yes, sir, I have no objection.

Mr. PLUMMER.—I will give you a copy. I will read it as part of the record here, so it can be considered just the same as though it was already filed. These affidavits were not [161—132] secured by myself, I did not even see the witnesses, and they are sworn to before an independent notary public. I do not think they can be disputed. They are not disputed in the record.

W. H. Plummer, being first duly sworn, deposes and says: That he is now and at all times has been the attorney for defendant in the above-entitled action, and had charge of defendant's trial in the above court. That he was greatly surprised by the testimony given by Dr. Ransom. After testimony was given he had no opportunity to interview witness, or secure evidence to rebut the same, and he did not know of the evidence, which can now be adduced to dispute the evidence of Dr. Ransom, as shown by the affidavit hereto attached, and could not have anticipated the evidence of Dr. Ransom, and by permitting said evidence to be introduced as re-

buttal immediately preceding the Court's order of counsel to proceed with their arguments to the jury, he had no opportunity to either consult with his client or other witnesses, to dispute said testimony, and defendant and his counsel were taken wholly by surprise, which ordinary care and prudence could not guard against.

(Signed) W. H. PLUMMER.

Subscribed and sworn to before me this 19th day of October, 1922.

[Seal]

(Signed) J. P. MURPHY,

Notary Public for the State of Washington, Residing at Spokane.

State of Washington,
City of Spokane,—ss.

Personally appeared Fred Roberts, who being first duly [162—133] sworn, deposes and says: That one Mrs. Idah Casey was employed by him from about December 9th, 1921, to about April 12th, as housekeeper, at which latter date she gave herself up to the City Police; that during this period of employment said Mrs. Casey worked a great deal of the time in her bare arms and that the affiant had every opportunity to inspect the conditions of said Mrs. Casey's arm, that he find them to be wholly free from any blue marks, spots, affected skin, or any indication of the use of the hypodermic needle whatsoever. That toward the end of the employment of said Mrs. Casey, the affiant discovered powders in a small pasteboard box in the belongings of said Mrs. Casey, evidently taken by

the mouth by the woman, that the affiant afterwards threw the powders in the stove.

(Signed) FRED ROBERTS,
Manager of the Manchester Chicken Ranch, 2907
South Oak St., Spokane.

Phone Main 4605-J.

Subscribed and sworn to before me this 19th day of October, 1922.

[Seal] (Signed) C. E. MALLETT,
Notary for the State of Washington, Residing at
Spokane.

The undersigned, being first duly sworn on oath, deposes and says: That they are well acquainted with Ida Casey, one of the witnesses who testified for the United States in the above-entitled cause. That within two or three weeks after the first day of April, 1922, that they and each of them had occasion to examine the arms of Ida Casey, that on one of the arms of said Ida Casey there appeared two very indistinct indications of the use of a hypodermic needle, which had become almost obliterated [163—134] excepting upon close inspection. That the other arm of Ida Casey was wholly free of any indication of the use of a hypodermic needle and the injection of any narcotics therein.

(Signed) MRS. C. S. RODGERS,
Business at 821 North Monroe St.

(Signed) FRED MANCHESTER ROBERTS,
2907 South Oak.

Phone Main 4605-J.

Subscribed and sworn to before me this 19th day of October, 1922.

[Seal] (Signed) C. E. MALLETT,
Notary Public for the State of Washington, Re-
siding in Spokane.

Mr. PLUMMER.—Mrs. Rodgers also makes an independent affidavit; this is the one I have not filed yet.

Personally appeared Mrs. C. S. Rodgers, who, first being duly sworn, deposes and says: That she is well acquainted with Mrs. Ida Casey, and that she has been so acquainted for a period of three years; that during this period of acquaintance with said Mrs. Casey, there never were any blue marks, spots, or skin affections whatsoever, indicating the use of the hypodermic needle on the arms of said Mrs. Casey. Further the affiant states that she saw the arms of said Casey at intervals while she worked as housekeeper on the Manchester Chicken Range, at #2907 So. Oak Street, this City, and inspected them within two weeks following April 1st, 1922, that the arms of said Mrs. Casey were wholly free from any marks indicating the use of the hypodermic needle.

(Signed) MRS. C. S. RODGERS,

Business Address: N. 821 Monroe St., City.

[164—135]

Now, if your Honor please, we would also have had an opportunity of showing, if that testimony had not gone in by rebuttal, by the doctors we had here who had been excused and we could not get them in a minute, of course, where a hypodermic

needle is used by a physician it ordinarily leaves no mark at all. It is where the persons use it themselves that the marks are left, therefore any marks left by Dr. Linder on the arm of Mrs. Casey would not appear ten or fifteen days afterward. It simply cut us off from any testimony along that line. I am not criticizing the Court for letting it in, but the Court can see how we were taken by surprise, because the matter had not been at issue and we had no chance, of course, to know anything about what would come up.

This, of course, more than the ordinary case, is of special importance to this defendant. As the record shows here, he has been a practicing physician here for fifteen or eighteen years. There is nothing against his record. He showed a good reputation and good character; it was not attacked, could not be attacked. He is a man along in years and has spent the best part of his life in building up his practice. If a judgment of conviction is had on the testimony of a woman like Ida Casey and on this record, and if this verdict be allowed to stand when it is inconsistent on the different counts, it not only means the punishment of Dr. Linder by this Court but it means the taking away of his license to practice in this state, because the judgment of conviction on this charge would cause his removal. This is of the utmost importance, the Court can see that, I know, as well as I can. [165—136]

Decision.

The COURT.—So far as the inconsistency of the verdict between the first and second counts is concerned, even though two counts charge separate and distinct crimes and are supported by the same identical testimony, I do not understand that a verdict of not guilty on one count and guilty on the other are inconsistent as that term is understood in law. Of course, I do not know why a jury should do such a thing, but there is no inconsistency in such verdicts. A finding in this case of not guilty on the first count is not equivalent to a finding of not guilty on the second count. If the testimony stood on the evidence of the Government alone, I could very well understand why the jury returned such a verdict, because the sale charged in the first count was not corroborated in any way. It depended entirely upon the testimony of this woman, and I can well understand why a jury would not care to convict on uncorroborated testimony given by her. Of course, when the Doctor went on the stand he admitted the sale charged there, so it did not make very much difference between the two counts. The jury might have reached the conclusion he did not know she was an addict the first time, but when he gave her the second treatment he did, and there is no inconsistency between the two verdicts in that regard.

As to the third count, while it charges a great deal it should not charge, I treated it on the trial as a charge of failure to keep a proper record. That

is the only question I submitted to the jury, and the jury found he had kept a proper record, or at least were not satisfied he had not, and found him [166—137] not guilty, so there is no inconsistency there.

As to the other question, I would readily have required the woman to exhibit her arm to the jury had either party requested it. That would have been the conclusive test as to whether or not the doctor testified to the truth. I will say for myself I do not understand how a man who has been in the practice of his profession for fifteen or eighteen years could examine a broken-down woman like she was and not know she was an addict; that is beyond my comprehension.

The motion for a new trial and the other motions will be overruled.

Mr. PLUMMER.—The defendant takes an exception separately and apart as to the ruling of the Court on each motion. [167—138]

Reporter's Certificate.

I, J. H. Cooper, do hereby certify that the above and foregoing is a full, true and correct transcript of the stenographic notes taken by me of the testimony introduced and proceedings had on the trial of the above-entitled case, and that the same contain all objections made and exceptions taken therein.

J. H. COOPER,
Shorthand Reporter. [168—139]

Certificate of Judge to Bill of Exceptions.

State of Washington,
County of Spokane,—ss.

I, Frank H. Rudkin, United States District Judge for the Eastern District of Washington, and the Judge before whom the above-entitled action was tried, to wit: the cause entitled United States of America, Plaintiff, vs. Charles O. Linder, Defendant, which is No. 3981 in said District Court, DO HEREBY CERTIFY, that the matters and proceedings embodied in the foregoing bill of exceptions are matters and proceedings occurring in said cause and the same are hereby made a part of the record therein; and that the above and foregoing bill of exceptions contains all the material facts, matters and proceedings heretofore occurring in said cause and not already a part of the record therein; and contains all the evidence, oral and in writing therein, and that the above and foregoing bill of exceptions was duly and regularly filed with the Clerk of the said Court and thereafter duly and regularly served within the time authorized by law; and that no amendments were proposed to said bill of exceptions excepting such as are embodied therein; that due and regular written notice of application to the Court for settlement and certifying said bill of exceptions was made and served upon the plaintiff, which notice specified the place and time (not less than three days nor more than ten days after the service of said notice) to settle and certify said bill of exceptions.

Dated at Spokane, Washington, this 6th day of January, A. D. 1923.

FRANK H. RUDKIN,
Judge. [169—140]

In the District Court of the United States for the
Eastern District of Washington, Northern Di-
vision.

No. 3981.

UNITED STATES OF AMERICA,
Plaintiff,
vs.
C. O. LINDER,
Defendant.

Petition for Writ of Error.

Comes now C. O. Linder, defendant herein, and says: That on or about the 26th day of October, 1922, this Court entered sentence and judgment against the defendant, C. O. Linder, in which judgment and proceedings had thereunto in this cause certain errors were committed to the prejudice of defendant, all of which will appear more in detail from the assignment of errors, which is filed with this petition.

WHEREFORE, the said C. O. Linder prays that a writ of error may issue in his behalf out of the United States Circuit Court of Appeals in and for the Ninth Circuit of the United States, for the correction of the errors so complained of, and that the Court fix the bond to operate also as

a supersedeas, and that a transcript of the record, proceedings and papers in said cause, duly authenticated, may be sent to the said Circuit Court of Appeals.

W. H. PLUMMER,
Attorney for Defendant.

Filed in the U. S. Dist. Court, Eastern Dist. of Washington. Jan. 6, 1923. Alan G. Paine, Clerk.
By A. P. Rumburg, Deputy. [170]

In the District Court of the United States for the
Eastern District of Washington, Northern Division.

No. 3981.

UNITED STATES OF AMERICA,
Plaintiff,
vs.
C. O. LINDER,
Defendant.

Order Allowing Writ of Error.

On this 6th day of January, 1923, came the defendant, C. O. Linder, and filed herein and presented to the Court his petition praying for the allowance of a writ of error, and filed therewith his assignments of error, intended to be urged by him, and prayed that the bond to be given to operate also as a supersedeas and stay bond, be fixed by the Court, and also that a transcript of the record and proceedings and papers upon which

judgment and sentence herein was rendered, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Judicial Circuit, and such other and further proceedings may be had as may be proper in the premises.

In consideration thereof, the Court does allow the writ of error, and the bond for such writ of error and also to operate as a supersedeas, is fixed in the sum of \$1500.00, and upon defendant giving such bond, all proceedings to enforce said sentence and judgment to be stayed, until such writ of error is determined.

FRANK H. RUDKIN,
United States District Judge.

Filed in the U. S. District Court, Eastern District of Washington. Jan. 6, 1923. Alan G. Paine, Clerk. By A. P. Rumburg, Deputy. [171]

In the District Court of the United States for the
Eastern District of Washington, Northern Division.

No. 3981.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

C. O. LINDER,

Defendant

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8
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Writ of Error (Copy).

The President of the United States to the Honorable Judge of the District Court of the United States, for the Eastern District of Washington, Northern Division, GREETING:

Because in the records and proceedings as also in the rendition of judgment and sentence on a plea, which in the said District Court before you, or some of you, between C. O. Linder, plaintiff in error (defendant in the lower court), and the United States of America, defendant in error (plaintiff in the lower court), manifest error hath happened, to the great damage of the said C. O. Linder, plaintiff in error as by his complaint appears:

We being willing that error, if any hath happened, shall be duly corrected, and full and speedy justice done to the parties aforesaid, in this behalf duly command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the records and proceedings aforesaid, with all things concerning the same to the United States Circuit Court of Appeals for the Ninth Judicial Circuit, together with this writ, so that you have the same at the City of San Francisco, in the State of California, within thirty days from the date of this writ in the said Circuit Court of Appeals, to be then and there held, that the records and proceedings aforesaid, being inspected, this said Circuit Court of Appeals may cause further to be done therein to correct that error what of

right and according to the law and custom of the United States should be done.

WITNESS the Honorable WILLIAM HOWARD TAFT, Chief Justice of the Supreme Court of the United States, this 6th day of January, [172] 1923, in the year of our Lord one thousand nine hundred twenty-two.

ALAN G. PAINE,
Clerk of the United States District Court, for the
Eastern District of Washington, Northern
Division.

Allowed by:

FRANK H. RUDKIN,
District Judge.

Filed in the U. S. Dist. Court, Eastern Dist.
of Washington. Jan. 6, 1923. Alan G. Paine,
Clerk. By A. P. Rumburg, Deputy. [173]

In the District Court of the United States for the
Eastern District of Washington, Northern Di-
vision.

No. 3981.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

C. O. LINDER,
Defendant.

Citation on Writ of Error (Copy).

The President of the United States, to the United States of America, and the Messrs. F. R. Jeffrey and H. Sylvester Garvin, Your Attorneys,
GREETING:

You are hereby cited and admonished to be and appear at the United States Circuit Court of Appeals for the Ninth Circuit, to be held at the City of San Francisco, in the State of California, within thirty days from the date of this writ, pursuant to a writ of error, regularly issued, and which is on file in the office of the clerk of the District Court of the United States, for the Eastern District of Washington, Northern Division, in an action pending in said court, wherein C. O. Linder is plaintiff in error (defendant in the lower court), and the United States of America, is a defendant in error (plaintiff in the lower court), and to show cause, if any there be, why the judgment in said writ of error mentioned, should not be corrected and speedy justice should not be done to the parties in that behalf.

WITNESS The Honorable **WILLIAM HOWARD TAFT**, Chief Justice of the Supreme Court of the United States of America, this 6th day of January, 1923.

FRANK H. RUDKIN,
United States District Judge.

Attest: **ALAN G. PAINE,**
Clerk of said Court.

[Seal]

Due and legal service of above citation acknowledged and copy thereof received this 8th day of January, 1923.

F. R. JEFFREY,
U. S. District Attorney.

Filed in the U. S. District Court, Eastern District of Washington. Jan. 6, 1923. Alan G. Paine, Clerk. By A. P. Rumburg, Deputy. [174]

In the District Court of the United States for the
Eastern District of Washington, Northern Division.

No. 3981.

UNITED STATES OF AMERICA,
Plaintiff,
vs.
C. O. LINDER,
Defendant.

Bond on Writ of Error.

KNOW ALL MEN BY THESE PRESENTS:
That we, C. O. Linder, as principal, and C. E. Maillette, and Otto L. Elvigen, as sureties, are held and firmly bound unto the United States of America, in the full and just sum of \$1500.00, to be paid to the United States of America, to which payment well and truly to be paid, we bind ourselves, our heirs, executors and administrators, jointly and severally by these presents.

Sealed with our seals and dated this 30th day of

December, in the year of our Lord, one thousand nine hundred twenty-two.

WHEREAS, lately at the September term, A. D. 1922, of the District Court of the United States, for the Eastern District of Washington, Northern Division, in a suit pending in said court, between the United States of America, plaintiff, and C. O. Linder, defendant, a judgment and sentence was rendered against the C. O. Linder, and the said C. O. Linder has obtained a writ of error from the United States Circuit Court of Appeals for the Ninth Circuit to reverse the judgment and sentence in the aforesaid suit, and a citation directed to the said United States of America, citing and admonishing the United States of America, to be and appear in the United States Circuit Court of Appeals, for the Ninth Circuit at the city of San Francisco, State of California, — days from and after the date of said citation, which citation has been duly served.

Now, the condition of the above obligation is such that if the said C. O. Linder shall appear, either in person or by attorney, in the United States Circuit Court of Appeals, for the Ninth Circuit, on such day or days as may be appointed for the hearing of said cause, in said court, and prosecute his said writ of error, and [175] abide by and obey all orders made by the United States Circuit Court of Appeals for the Ninth Circuit in said cause, and shall surrender himself in the execution of the judgment and sentence appealed from, as said Court may direct, if the judgment and sentence against

him shall be affirmed, or the writ of error or appeal is dismissed; and if he shall appear for trial in the District Court of the United States, for the Eastern District of Washington, Northern Division, on such day or days as may be appointed for a retrial, by said District Court, and abide by and obey all orders made by said court, provided the judgment and sentence against him shall be reversed by the United States Circuit Court of Appeals for the Ninth Circuit, then the above obligation to be void; otherwise to remain in full force, virtue and effect.

C. O. LINDER,

Principal.

C. E. MALLETT,

OTTO L. ELVIGEN,

Sureties.

State of Washington,

County of Spokane,—ss.

C. E. Mallett and Otto L. Elvigen, being first duly sworn according to law, on their oaths respectively says, each for himself, and not one for the other: That he is one of the sureties who signed the within bond; that he is above the age of twenty-one years; that he is a *bona fide* resident of the State of Washington, and a property holder therein; that he is worth the sum of \$1500.00, in his own individual and separate property in said state, over and above all his debts and liabilities, and property exempt from execution.

C. E. MALLETT,

OTTO L. ELVIGEN.

Subscribed and sworn to before me this 30th day of December, 1922.

JESSE G. CAMPBELL,
Notary Public for the State of Washington, Residing in Spokane.

Approved: Jan. 6, 1923.

FRANK H. RUDKIN,
Judge.

Filed in the U. S. District Court, Eastern Dist. of Washington. Jan. 6, 1923. Alan G. Paine, Clerk. By A. P. Rumburg, Deputy. [176]

In the District Court of the United States for the Eastern District of Washington, Northern Division.

No. 3981.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

CHARLES O. LINDER,
Defendant.

Assignment of Errors.

Comes now the above-named defendant, and herein files and claims his assignment of errors, committed by the trial Judge in the proceedings and trial of the above-entitled cause, to wit:

I.

That the Court erred in refusing to quash the search-warrant issued by United States Commis-

sioner, John L. Dirks, on the 1st day of April, 1922, and to suppress in the trial of this cause any evidence obtained by A. E. Gatens, and the United States through its officers, attaches, and all persons working through them or either of them thereby.

II.

That the Court erred in permitting A. E. Gatens, Harlan Peyton, and others to testify as to statements made to them and discoveries discovered by them, and all information obtained by them while searching the offices of the defendant, under an invalid and illegal search-warrant.

III.

That the Court erred in refusing to grant a new trial, upon the affidavit of W. H. Plummer, undisputed, and upon defendant's motion for new trial, upon the ground of newly discovered evidence, defendant's amended motion for new trial, and affidavits being made a part of this record.

IV.

That the Court erred in overruling defendant's motion in [177] arrest of judgment, as to the first and third counts of the indictment, as is shown by said motion interposed by defendant.

V.

That the Court erred in not granting defendant's motion for judgment of acquittal notwithstanding the verdict of the jury, upon the grounds and reasons stated in said motion to which reference is hereby made.

W. H. PLUMMER,
Attorney for Defendant, C. O. Linder.

Filed in the U. S. District Court, Eastern Dist. of Washington. Jan. 6, 1923. Alan G. Paine, Clerk. By A. P. Rumburg, Deputy. [178]

In the District Court of the United States for the Eastern District of Washington, Northern Division.

No. 3981.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CHARLES O. LINDER,

Defendant.

Stipulation Re Transmission of Original Bill of Exceptions.

It is hereby stipulated and agreed by and between the respective parties hereto, through their respective attorneys, that the clerk of the above-named court may forward to the Circuit Court of Appeals of the Ninth Circuit the original bill of exceptions, now on file with said clerk.

Dated at Spokane, Washington, this 15th day of January, 1923.

H. SYLVESTER GARVIN,
Attorney for Plaintiff.

W. H. PLUMMER,
Attorney for Defendant.

Filed in the U. S. District Court, Eastern District of Washington. January 15, 1923. Alan G. Paine, Clerk. By A. P. Rumburg, Deputy. [179]

In the District Court of the United States for the
Eastern District of Washington, Northern Di-
vision.

No. 3981.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CHARLES O. LINDER,

Defendant.

Praeipice for Transcript of Record.

To the Clerk of the Above-entitled Court:

Please make up and certify to the Circuit Court
of Appeals, Ninth Judicial Circuit, the following
papers and records in the above-entitled cause.

1. Indictment.
2. Verdict of the jury.
3. Minutes of the Judge's notes.
4. Motion to quash search-warrant and suppress
evidence.
5. Order denying said motion.
6. Motion of defendant for judgment of acquittal
notwithstanding verdict of the jury.
7. Motion in arrest of judgment.
8. Amended motion for new trial.
9. Judgment and sentence of the court.
10. Motion of United States attorney resisting de-
fendant's application for suppression of the
evidence of A. E. Gatens, Federal Narcotic
Agent.

11. All journal entries or orders made by the Court denying each and all of the motions and applications made by defendant.
12. Order allowing sixty days to file a bill of exceptions.
13. Order fixing bond on writ of error of defendant in the sum of fifteen hundred dollars (\$1500).
14. Petition for writ of error.
15. Order allowing writ of error.
16. Writ of error. [180]
17. Citation.
18. Bond and approval thereof.
19. Defendant's bill of exceptions, duly certified.
20. Defendant's assignment of errors.
21. Stipulation to send original bill of exceptions to the Circuit Court of Appeals.

W. H. PLUMMER,

Attorney for Defendant, C. O. Linder.

Filed in the U. S. District Court, Eastern Dist. of Washington. Jan. 6, 1923. Alan G. Paine, Clerk. By A. P. Rumburg, Deputy. [181]

In the District Court of the United States for the Eastern District of Washington, Northern Division.

Certificate of Clerk U. S. District Court to Transcript of Record.

United States of America,
Eastern District of Washington,—ss.

I, Alan G. Paine, Clerk of the District Court of

the United States for the Eastern District of Washington, Northern Division, do hereby certify that the foregoing typewritten pages are a full, true, correct and complete copy of the record, papers and other proceedings in the foregoing entitled cause as called for by the defendant and plaintiff in error in its praecipe as the same remains of record and on file in the office of the clerk of said District Court, except the order denying motion to quash search-warrant and suppress evidence, which was never filed in this court, and the same constitute the record on writ of error from the judgment of the District Court of the United States for the Eastern District of Washington, to the Circuit Court of Appeals for the Ninth Judicial Circuit, San Francisco, California, which writ of error was lodged and filed in my office on January 6, 1923.

I further certify that I hereto attach and herewith transmit the original writ of error and the original Citation issued in this cause.

I further certify that the fees of the clerk of this court for preparing and certifying to the foregoing typewritten record amounts to the sum of \$15.05, which amount has been paid in full by defendant and plaintiff in error, Charles O. Linder.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said District Court of Spokane, in said District, this 23d day of January, 1923.

[Seal]

ALAN G. PAINE,
Clerk. [182]

In the District Court of the United States for the
Eastern District of Washington, Northern
Division.

No. 3981.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

C. O. LINDER,

Defendant.

Citation on Writ of Error (Original).

The President of the United States to the United
States of America, and the Messrs. F. R. Jef-
frey, and H. Sylvester Garvin, Your Attorneys,
GREETING:

You are hereby cited and admonished to be and
appear at the United States Circuit Court of Ap-
peals for the Ninth Circuit, to be held at the city
of San Francisco, in the State of California, within
thirty days from the date of this writ, pursuant to a
writ of error, regularly issued, and which is on file
in the office of the clerk of the District Court of the
United States, for the Eastern District of Washing-
ton, Northern Division, in an action pending in
said court, wherein C. O. Linder is plaintiff in error
(defendant in the lower court), and the United
States of America, is a defendant in error (plaintiff
in the lower court), and to show cause, if any there
be, why the judgment in said writ of error men-
tioned, should not be corrected and speedy justice
should not be done to the parties in that behalf.

WITNESS the Honorable WILLIAM HOWARD TAFT, Chief Justice of the Supreme Court of the United States of America, this 6th day of January, 1923.

FRANK H. RUDKIN,
United States District Judge.

[Seal]

Attest: ALAN G. PAINE,
Clerk of Said Court.

Due and legal service of above citation acknowledged and copy thereof received this 8th day of January, 1923.

F. R. JEFFREY,
U. S. District Atty. [183]

[Endorsed]: 3981. Citation. Filed in the U. S. District Court, Eastern District of Washington. Jan. 6, 1923. Alan G. Paine, Clerk. A. P. Rumburg, Deputy.

G. O. B., vol. 5, p. 296. [184]

In the District Court of the United States for the Eastern District of Washington, Northern Division.

No. 3981.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

C. O. LINDER,

Defendant.

Writ of Error (Original).

The President of the United States to the Honorable Judge of the District Court of the United States for the Eastern District of Washington, Northern Division, GREETING:

Because in the records and proceedings as also in the rendition of judgment and sentence on a plea, which in the said District Court, before you, or some of you, between C. O. Linder, plaintiff in error (defendant in the lower court), and the United States of America, defendant in error (plaintiff in the lower court), manifest error hath happened, to the great damage of the said C. O. Linder, plaintiff in error, as by his complaint appears:

We being willing that error, if any hath happened, shall be duly corrected, and full and speedy justice done to the parties aforesaid, in this behalf duly command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the records and proceedings aforesaid, with all things concerning the same to the United States Circuit Court of Appeals for the Ninth Judicial Circuit, together with this writ, so that you have the same *that* the City of San Francisco, in the State of California, within thirty days from the date of this writ in the said Circuit Court of Appeals, to be then and there held, that the records and proceedings aforesaid, being inspected, this said Circuit Court of Appeals may cause further to

be done therein to correct that error what of right and according to the law and custom of the United States should be done.

WITNESS the Honorable WILLIAM HOWARD TAFT, Chief Justice of the Supreme Court of the United States, this 6th day [185] of January, 1923, in the year of our Lord one thousand nine hundred twenty-two.

[Seal]

ALAN G. PAINE,
Clerk of the United States District Court for the
Eastern District of Washington, Northern Division.

Allowed by:

FRANK H. RUDKIN,
District Judge. [186]

[Endorsed]: 3891. United States vs. Charles O. Linder. Writ of Error. Filed in the U. S. District Court, Eastern Dist. of Washington. Jan. 6, 1923. Alan G. Paine, Clerk. A. P. Rumburg, Deputy. G. O. B., vol. 5, p. 296. [187]

[Endorsed]: No. 3982. United States Circuit Court of Appeals for the Ninth Circuit. C. O. Linder, Plaintiff in Error, vs. The United States of America, Defendant in Error. Transcript of Record. Upon Writ of Error to the United States

District Court of the Eastern District of Washington, Northern Division.

Received January 27, 1923.

F. D. MONCKTON,
Clerk.

Filed February 2, 1923.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.

[Endorsed]: Printed Transcript of Record.
Filed March 6, 1923. F. D. Monckton, Clerk.

No. 3982

United States
Circuit Court of Appeals
For the Ninth Circuit.

C. O. LINDER,

Plaintiff in Error,

vs.

UNITED STATES OF AMERICA,

Defendant in Error.

Upon Writ of Error to the United States District Court
of the Eastern District of Washington,
Northern Division.

PROCEEDINGS HAD IN THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE NINTH CIRCUIT.

At a stated term, to wit, the October Term, A. D. 1922, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the courtroom thereof, in the city and county of San Francisco, in the State of California, on Tuesday, the twenty-second day of May, in the year of our Lord one thousand nine hundred and twenty-two. Present: The Honorable WILLIAM B. GILBERT, Senior Circuit Judge, Presiding; The Honorable ERSKINE M. ROSS, Circuit Judge; The Honorable WILLIAM H. HUNT, Circuit Judge.

No. 3982.

C. O. LINDER,

Plaintiff in Error,

vs.

THE UNITED STATES OF AMERICA,

Defendant in Error.

Order of Submission.

ORDERED above-entitled cause argued by Mr. W. H. Plummer, counsel for the plaintiff in error, and by Mr. A. Sylvester Garvil, Assistant United States Attorney and counsel for the defendant in error, and submitted to the Court for consideration and decision.

At a stated term, to wit, the October Term, A. D. 1922, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the courtroom thereof, in the city and county of San Francisco, in the State of California, on Monday, the second day of July, in the year of our Lord one thousand nine hundred and twenty-three. Present: The Honorable WILLIAM H. HUNT, Circuit Judge, Presiding; The Honorable WILLIAM W. MORROW, Circuit Judge; The Honorable FRANK H. RUDKIN, Circuit Judge.

IN THE MATTER OF THE FILING OF
CERTAIN OPINIONS AND OF THE
FILING AND RECORDING OF CER-
TAIN JUDGMENTS AND DECREES.

By direction of the Honorable William B. Gilbert, Erskine M. Ross, and William H. Hunt, Circuit Judges, before whom the causes were heard, ORDERED that the typewritten opinion this day rendered by this Court in each of the following entitled causes be forthwith filed by the Clerk, and that a judgment or decree be filed, and recorded in the minutes of this court in each of the causes in accordance with the opinion filed therein: *C. O. Linder, Plaintiff in Error, vs. The United States of America, Defendant in Error.* No. 3982. * * *

In the United States Circuit Court of Appeals for
the Ninth Circuit.

No. 3982.

C. O. LINDER,

Plaintiff in Error,

vs.

THE UNITED STATES OF AMERICA,

Defendant in Error.

Opinion U. S. Circuit Court of Appeals.

Before GILBERT, ROSS and HUNT, Circuit
Judges.

GILBERT, Circuit Judge.—The plaintiff in error was indicted under three counts for violation of the Harrison Narcotic Act of December 17, 1914, as amended February 24, 1919. He was acquitted of the first and third counts but was convicted under the second count which charged that on a date named, he unlawfully sold to one, Ida Casey, morphine and cocaine in violation of the provisions of the Act. He assigns as error the denial of his motion to suppress the search-warrant under which an Internal Revenue Narcotic Inspector searched his office and took therefrom certain narcotics. Motion to quash the search-warrant was filed on April 22, 1922. No action was taken on the motion. It was not brought to the attention of the Court at any time before or during the trial. The case came on for trial on October 9, 1922, six months after the filing of the motion. The articles taken from the

office of the plaintiff in error were offered and received in evidence without objection from his counsel. All that could have been accomplished for the plaintiff in error if his motion had been granted would have been to suppress the evidence which was thus received without objection. Having consented to the admission of that evidence the plaintiff in error is in no position to challenge the sufficiency of the search-warrant, and in fact it seems clear that the officer who took the narcotics from the office of the plaintiff in error would by virtue of his official position have been justified in making the search and seizure without the aid of a search-warrant.

There was no error in denying the motion for an instructed verdict of acquittal. The evidence was ample if credited by the jury to sustain a conviction.

It is assigned as error that the Trial Court abused discretion in refusing to grant a new trial on the ground of newly discovered evidence. The assignment ignores the settled rule that the denial of a motion for new trial is not assignable as error, it being within the discretion of the Trial Court to decide whether on the ground of newly discovered evidence or other ground a new trial should be had. There was no abuse of discretion in denying the motion and the same is true of the motion in arrest of judgment.

It is urged that the Court below erred in denying the motion of plaintiff in error for judgment of acquittal notwithstanding the verdict of the jury.

The motion was based on the ground that the verdict on the second count was inconsistent with the verdict on the first count. The first count charged a sale on March 31, 1922. The second count charged a sale to the same person on April 1, 1922. The inconsistency is said to consist in the fact that the evidence of both sales was substantially the same, and rested on the testimony of Ida Casey, and that if the jury refused to believe her testimony as to the first alleged offense, their verdict on the second was inconsistent therewith. The Court below in ruling on the question on the motion for a new trial intimated that the jury might have reached the conclusion that the plaintiff in error did not know that Ida Casey was an addict at the time of the first sale of the narcotics, but that when he gave her the second treatment, the plaintiff in error did know it, and on that ground the Court rejected the contention that there was inconsistency in the two verdicts. We agree with that view and we find no inconsistency for which the judgment should be reversed. We are of course uninformed of the reason why the jury credited the testimony as to the second count and rejected it as to the first. It may have been for the reason that the testimony as to the second count was corroborated by the fact that when Ida Casey left the doctor's office she was intercepted and the narcotics which had been given her were taken from her possession by the Internal Revenue Narcotics Inspector. But whatever the reason may have been, the verdict on one count of an indictment is not to be rejected for the reason

that a jury have acquitted the accused under another count for an act committed on a different date, even if the evidence as to both counts is identical.

The judgment is affirmed.

[Endorsed]: Opinion. Filed July 2, 1923. F. D. Monekton, Clerk. By Paul P. O'Brien, Deputy Clerk.

United States Circuit Court of Appeals for the
Ninth Circuit.

No. 3982.

C. O. LINDER,

Plaintiff in Error,

vs.

THE UNITED STATES OF AMERICA,
Defendant in Error.

Judgment U. S. Circuit Court of Appeals.

In error to the District Court of the United States for the Eastern District of Washington, Northern Division.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Eastern District of Washington, Northern Division, and was duly submitted:

On consideration whereof, it is now here ordered and adjudged by this Court, that the judgment of the said District Court in this cause be, and hereby is affirmed.

[Endorsed]: Judgment. Filed and Entered July 2, 1923. F. D. Monckton, Clerk. By Paul P. O'Brien, Deputy Clerk.

At a stated term, to wit, the October Term, A. D. 1922, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the courtroom thereof, in the city and county of San Francisco, in the State of California, on Monday, the twentieth day of August, in the year of our Lord one thousand nine hundred and twenty-three. Present: The Honorable WILLIAM H. HUNT, Circuit Judge, Presiding; The Honorable WILLIAM W. MORROW, Circuit Judge.

No. 3982.

C. O. LINDER,

Plaintiff in Error,

vs.

UNITED STATES OF AMERICA,

Defendant in Error.

Order Denying Petition for Rehearing.

On consideration thereof, and by direction of the Honorable William B. Gilbert, Erskine M. Ross and William H. Hunt, Circuit Judges, before whom the cause was heard, IT IS ORDERED that the petition, filed August 13, 1923, on behalf of the plaintiff in error for a rehearing of the above-entitled cause be, and hereby is denied.

United States Circuit Court of Appeals for the
Ninth Circuit.

No. 3982.

C. O. LINDER,

Plaintiff in Error,

vs.

UNITED STATES OF AMERICA,

Defendant in Error.

**Order Staying Mandate Under Rule 32 to and
Including October 1, 1923.**

Upon telegraphic application of Mr. W. H. Plummer, counsel for the plaintiff in error, and good cause therefor appearing, ORDERED mandate of this Court under Rule 32 in the above-entitled cause stayed to and including October 1, 1923.

It is further ordered that in the event the petition for writ of certiorari is filed by counsel for the plaintiff in error with the Clerk of the Supreme Court of the United States within the time extended, that said mandate of this Court be and hereby is stayed until after the Supreme Court passes upon the petition for issuance of said writ.

W. H. HUNT,

United States Circuit Judge.

[Endorsed]: Order Staying Issuance of Mandate, etc. Filed August 27, 1923. F. D. Monckton, Clerk.

United States Circuit Court of Appeals for the
Ninth Circuit.

No. 3982.

C. O. LINDER,

Plaintiff in Error,

vs.

UNITED STATES OF AMERICA,

Defendant in Error.

**Order Staying Mandate Under Rule 32, to and
Including October 9, 1923.**

Upon telegraphic application of Messrs. Turner, Nuzum and Nuzum, counsel for the plaintiff in error, and good cause therefor appearing, ORDERED mandate of this Court under Rule 32 in the above-entitled cause stayed to and including October 9, 1923.

It is further ordered that in the event the petition for writ of certiorari is filed by counsel for the plaintiff in error with the Clerk of the Supreme Court of the United States within the time extended, that said mandate of this Court be and hereby is stayed until after the Supreme Court passes upon the petition for issuance of said writ.

Dated: San Francisco, Calif., September 15, 1923.

W. H. HUNT,

United States Circuit Judge.

[TELEGRAM.]

1923 Sep 14 PM 3 46

SKA 135 68 NL

SPOKANE WASH 14

F D MONCTON

Clerk United States Circuit Court of Appeals
San Francisco Calif In addition to certified copy
of record in Linder case please send by Parcel Post
nine copies of record uncertified Judge Turner who
has been absent is preparing petition and brief and
finds he cannot finish same in time to give District
Attorney two weeks notice for presentation October
second Please present request to Judge Gilbert or
any judge present to extend stay order until October
ninth Please reply

TURNER, NUZUM AND NUZUM.

[Endorsed]: Order Staying Issuance of Man-
date, etc. Filed September 15, 1923. F. D. Monck-
ton, Clerk.

United States Circuit Court of Appeals for the
Ninth Circuit.

C. O. LINDER,

Plaintiff in Error,

vs.

UNITED STATES OF AMERICA,

Defendant in Error.

**Certificate of Clerk U. S. Circuit Court of Appeals
to Record Certified Under Section 3 of Rule 37
of the Rules of the Supreme Court of the
United States.**

I, Frank D. Monckton, as Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, do hereby certify the foregoing two hundred and sixteen (216) pages, numbered from and including 1 to and including 216, to be a full, true and correct copy of the entire record of the above-entitled case in the said Circuit Court of Appeals, made pursuant to request of counsel for the plaintiff in error, and certified under section 3 of Rule 37 of the rules of the Supreme Court of the United States, as the originals thereof remain on file and appear of record in my office.

ATTEST my hand and the seal of the said the United States Circuit Court of Appeals for the Ninth Circuit, at the City of San Francisco, in the State of California, this 20th day of September, A. D. 1923.

[Seal]

F. D. MONCKTON,

Clerk.

By Paul P. O'Brien,

Deputy Clerk.

IN UNITED STATES SUPREME COURT

WRIT OF CERTIORARI AND RETURN—Filed Nov. 27, 1923

UNITED STATES OF AMERICA, ss:

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the Honorable the Judges of the United States Circuit Court of Appeals for the Ninth Circuit, Greeting:

Being informed that there is now pending before you a suit in which C. O. Linder is plaintiff in error and The United States of America is defendant in error, No. 3982, which suit was removed into the said Circuit Court of Appeals by virtue of a writ of error to the District Court of the United States for the Eastern District of Washington, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said Circuit Court of Appeals and removed into the Supreme Court of the United States, do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable William H. Taft, Chief Justice of the United States, the twenty-sixth day of October, in the year of our Lord one thousand nine hundred and twenty-three.

Wm. R. Stansbury, Clerk of the Supreme Court of the United States.

[File endorsement omitted.]

UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

STIPULATION AS TO RETURN TO WRIT OF CERTIORARI

The Supreme Court of the United States having issued its Writ of Certiorari to the United States Circuit Court of Appeals, for the Ninth Circuit, commanding it to send to the said Supreme Court the record and proceedings in the above entitled cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done:

It is hereby stipulated by the parties to said cause that the transcript of record in said cause, filed in the said Supreme Court in aid of said Writ of Certiorari, and now on file therein, shall stand as a return to the said Writ of Certiorari.

Dated at Spokane, Washington, November 2, 1923.

W. H. Plummer, Turner, Nuzum & Nuzum, Attorneys for Plaintiff in Error. For the Attorney General, Frank R. Jeffrey, Attorney for Defendant in Error.

[Endorsed:] Stipulation as to Return to Writ of Certiorari. Filed November 19, 1923. F. D. Monckton, Clerk, by Paul P. O'Brien, Deputy Clerk.

UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT
 CERTIFICATE OF CLERK U. S. CIRCUIT COURT OF APPEALS TO STIPULATION AS TO RETURN TO WRIT OF CERTIORARI FROM THE SUPREME COURT OF THE UNITED STATES

I, Frank D. Monckton, as Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, do hereby certify the preceding page to be a full, true and correct copy of a "Stipulation as to Return to Writ of Certiorari," filed in the above entitled cause on the 19th day of November, A. D. 1923, as the original thereof remains on file and of record in my office.

Attest my hand and the seal of the United States Circuit Court of Appeals for the Ninth Circuit, at the City of San Francisco, in the State of California, this 19th day of November, A. D. 1923.

F. D. Monckton, Clerk, by Paul P. O'Brien, Deputy Clerk.
 (Seal of the United States Circuit Court of Appeals, Ninth Circuit.)

UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT
 RETURN TO WRIT OF CERTIORARI

By direction of the Honorable the Judges of the United States Circuit Court of Appeals for the Ninth Circuit, I, Frank D. Monckton, as Clerk of said Court, in obedience to the annexed writ of certiorari issued out of the Honorable the Supreme Court of the United States and addressed to the Honorable the Judges of the United States Circuit Court of Appeals for the Ninth Circuit, commanding them to send, without delay, to the said Supreme Court the record and proceedings in the above-entitled cause, do attach to the said Writ and send to the said Supreme Court a certified copy of a "Stipulation as to Return to Writ of Certiorari," in which said stipulation it is provided that the certified Transcript of the Record heretofore filed by the plaintiff in error in said cause in the said Supreme Court as a part of its petition for a Writ of Certiorari may be taken as the Return to the said Writ of Certiorari, the original of which stipulation was filed in my office on the 19th day of November, A. D. 1923.

In testimony whereof, I have hereunto set my hand and affixed the Seal of the United States Circuit Court of Appeals for the Ninth Circuit, at the City of San Francisco, in the State of California, this 19th day of November, A. D. 1923.

F. D. Monckton, Clerk, by Paul P. O'Brien, Deputy Clerk.
 (Seal of the United States Circuit Court of Appeals, Ninth Circuit.)

[File endorsement omitted.]

SEP 21

NOV 17

NOV 1933

NOV 17

SUPREME COURT

OF THE

UNITED STATES

OCTOBER TERM 1933

CHARLES C. LINDER

Petitioner

THE UNITED STATES OF
AMERICA

Respondent

PETITION FOR WRIT OF HABEAS CORPUS

W. H. PETER

ATTORNEY AT LAW

NEW YORK CITY

NEW YORK

IN THE
SUPREME COURT
OF THE
UNITED STATES

OCTOBER TERM, 1923

CHARLES O. LINDER,
Petitioner,

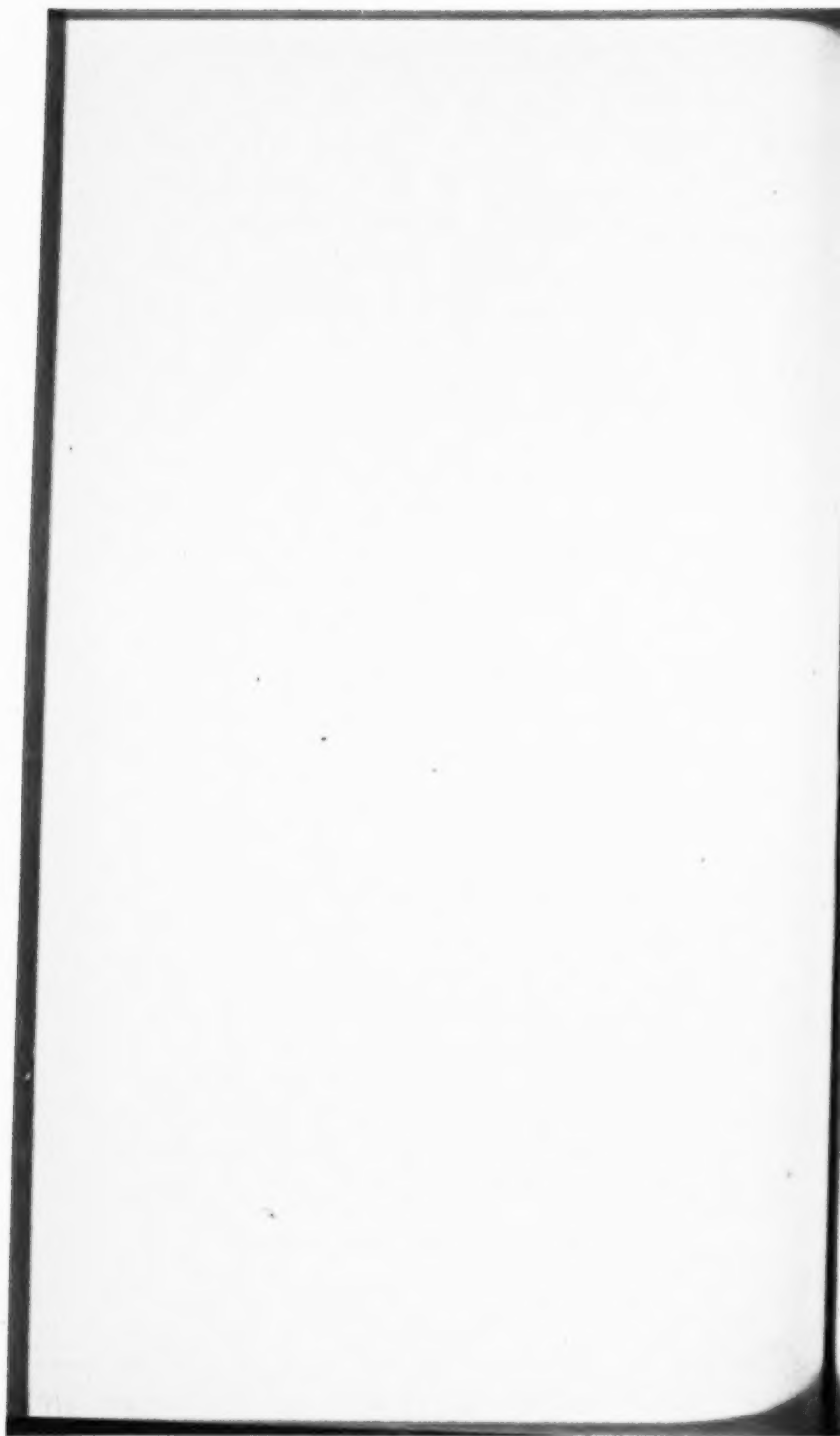
vs.

THE UNITED STATES OF
AMERICA,
Respondent.

PETITION FOR WRIT OF CERTIORARI

W. H. PLUMMER,
TURNER, NUZUM & NUZUM,
Attorneys for Petitioner.

GEORGE TURNER,
of Counsel.



To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States.

Your petitioner, Charles O. Linder, respectfully represents:

First: That at the April Term, 1922, of the United States District Court for the Eastern District of Washington, Northern Division, the Grand Jury empanelled for said term and in session duly returned into court an indictment against this petitioner in the words and figures following:

UNITED STATES OF AMERICA

Eastern District of Washington, Northern Division,
United States District Court.

April Term, 1922.

Indictment.

FIRST COUNT.

The Grand Jurors of the United States chosen, selected and sworn in and for the Northern Division of the Eastern District of Washington, upon their oaths present:

That CHARLES O. LINDER, whose other or true name is to the Grand Jurors unknown, hereinafter in this indictment called the defendant, late of, the

County of Spokane, State of Washington, heretofore, to-wit: On or about the thirtieth day of March, 1922, at Spokane, in the Northern Division of the Eastern District of Washington, and within the jurisdiction of this Court, did then and there violate the Act of December 17, 1914, entitled "An Act to provide for the registration of, with Collectors of Internal Revenue, and to impose a special tax upon all persons who produce, import, manufacture, compound, deal in, dispense, sell, distribute, or give away opium or coca leaves, their salts, derivatives, preparations, and for other purposes," as amended February 24, 1919, in that he did then and there knowingly, wilfully and unlawfully sell, barter and give to Ida Casey a compound, manufacture and derivative of opium, to-wit: A quantity of morphine, the exact amount being to the Grand Jurors unknown, not in pursuance of any written order of Ida Casey on a form issued for that purpose by the Commissioner of Internal Revenue of the United States; that the defendant was a duly licensed physician and registered under the Act; that Ida Casey was a person addicted to the habitual use of morphine and cocaine and known by the defendant to be so addicted; that Ida Casey did not require the administration of morphine by reason of any disease other than such addiction; that the defendant did not

dispense any of the morphine for the purpose of treating any disease or condition other than such addiction; that none of the morphine so dispensed by the defendant was then and there administered to or intended by the defendant to be administered to Ida Casey by the defendant or any nurse, or person acting under the direction of the defendant; nor *were* any of the morphine then and there consumed or intended to be consumed by Ida Casey in the presence of the defendant, but that all of the morphine was put in the possession or control of Ida Casey with the intention on the part of the defendant that Ida Casey would use the same by self-administration in divided doses extending over a period of time, the amount of morphine dispensed being more than sufficient or necessary to satisfy the craving of Ida Casey therefor if consumed by her all at one time; that Ida Casey was not in any way restrained or prevented from disposing of the morphine in any manner she saw fit and that the morphine so dispensed by the defendant was in the form in which said drugs are usually consumed by persons addicted to the habitual use thereof to satisfy their craving therefor and were adapted for consumption. Contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

COUNT II.

And the Grand Jurors aforesaid upon their oaths do further present:

That CHARLES O. LINDER, whose other or true name is to the Grand Jurors unknown, hereinafter in this indictment called the defendant, late of the County of Spokane, State of Washington, heretofore, to-wit: On or about the first day of April, 1922, at Spokane, in the Northern Division of the Eastern District of Washington, and within the jurisdiction of this Court, did then and there violate the Act of December 17, 1914, entitled "An Act to provide for the registration of, with Collectors of Internal Revenue, and to impose a special tax upon all persons who produce, import, manufacture, compound, deal in, dispense, sell, distribute, or give away opium or coca leaves, their salts, derivatives, preparations, and for other purposes," as amended February 24, 1919, in that he did then and there knowingly, wilfully and unlawfully sell, barter and give to Ida Casey a compound, manufacture and derivative of opium, to-wit: One (1) tablet of morphine and a compound, manufacture and derivative of coca leaves, to-wit: Three (3) tablets of cocaine, not in pursuance of any written order of Ida Casey on a form issued for that purpose by the Commissioner

of Internal Revenue of the United States; that the defendant was a duly licensed physician and registered under the Act; that Ida Casey was a person addicted to the habitual use of morphine and cocaine and known by the defendant to be so addicted; that Ida Casey did not require the administration of either morphine or cocaine by reason of any disease other than such addiction; that the defendant did not dispense any of the drugs for the purpose of treating any disease or condition other than such addiction; that none of the drugs so dispensed by the defendant was administered to Ida Casey by the defendant or any nurse, or person acting under the direction of the defendant; nor were any of the drugs consumed or intended to be consumed by Ida Casey in the presence of the defendant, but that all of the drugs were put in the possession or control of Ida Casey with the intention on the part of the defendant that Ida Casey would use the same by self-administration in divided doses over a period of time, the amount of each of said drugs dispensed being more than sufficient or necessary to satisfy the cravings of Ida Casey therefor if consumed by her all at one time; that Ida Casey was not in any way restrained or prevented from disposing of the drugs in any manner she saw fit and that the drugs so dispensed by the defendant were in the form in

which said drugs are usually consumed by persons addicted to the habitual use thereof to satisfy their cravings therefor and were adapted for consumption. Contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

COUNT III.

And the Grand Jurors aforesaid upon their oaths do further present:

That CHARLES O. LINDER, whose other or true name is to the Grand Jurors unknown, hereinafter in this indictment called the defendant, late of the County of Spokane, State of Washington, heretofore, to-wit: On or about the twenty-ninth day of March and subsequent dates, the last date being about April first, 1922, at Spokane, in the Northern Division of the Eastern District of Washington and within the jurisdiction of this Court did then and there violate the Act of December 17, 1914, entitled "An Act to provide for the registration of, with Collectors of Internal Revenue, and to impose a special tax upon all persons who produce, import, manufacture, compound, deal in, dispense, sell, distribute, or give away opium or coca leaves, their salts, derivatives, preparations, and for other purposes," as amended February 24, 1919, in

that being a duly licensed physician and registered under the terms of said act, he did then and there knowingly, wilfully, illegally and unlawfully dispense and distribute a compound, manufacture and derivative of opium, to-wit: Morphine and a compound, manufacture and derivative of coca leaves, to-wit: Cocaine, the exact amounts being to the Grand Jurors unknown, to one Ida Casey, not in the course of the legitimate pursuit of his profession, nor for the purpose of effecting a cure of a habit, but for the purpose of keeping her comfortable by satisfying her craving for narcotic drugs, she, the said Ida Casey being at the time addicted to the use of morphine and cocaine and being what is commonly known and called a "dope fiend"; which said fact was then and there known to the defendant and that the said defendant did on each of said dates fail to keep a proper record of the date, the name and address of the person to whom, and the purpose for which said morphine and cocaine was dispensed and distributed as required by law. Contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

FRANK R. JEFFREY,
United States Attorney,

HAL J. COLE,
Foreman.

A true bill.

Presented to the Court by the foreman of the Grand Jury in open court, in the presence of the Grand Jury and filed in the United States District Court, June 26, 1922.

ALAN G. PAINE,
Clerk.

By A. P. RUMBURG,
Deputy.

Second: That petitioner pleaded not guilty to said indictment, and at the October Term of said court a jury was empanelled in said court to determine the guilt or innocence of the petitioner of the offense therein charged, which said jury, after hearing the evidence offered on each side, the argument of counsel and the charge of the court, rendered a verdict finding petitioner guilty on the second count of the indictment, and not guilty on the first and third counts of the indictment.

Third: That thereafter at said term the said District Court rendered judgment on said verdict, and adjudged that petitioner be confined in the jail of Spokane County for the period of two months from the date of the sentence, and that he pay a fine of one

thousand dollars, and that he stand committed until duly discharged by law.

Fourth: That thereafter, and on January 6, 1923, a writ of error was prosecuted by petitioner from the judgment of said District Court to the Circuit Court of Appeals of the United States for the Ninth Circuit, and thereupon the records and proceedings were duly certified to said Circuit Court of Appeals, in the manner prescribed by law, as appears from the transcript of the record filed herewith.

Fifth: That such proceedings were had in the said Circuit Court of Appeals that on the 9th day of July, 1923, at a regular term of said court, an opinion was handed down affirming in all things the judgment of the District Court as aforesaid, and at a later date an order was made by said Circuit Court of Appeals denying a petition presented by petitioner for a rehearing. No mandate has yet been sent down to the said District Court because of an order of the said Circuit Court of Appeals staying the time until October 9, 1923, to give this petitioner an opportunity to present to this court his petition for a writ of *certiorari*. sent to this court his petition for a writ of *certiorari*.

Sixth: Your petitioner respectfully represents that the second count of the said indictment fails to state

facts constituting an offense against the laws of the United States, and that if said facts constitute an offense within the letter or spirit of the Act of Congress entitled, "An Act to provide for the registration of, with Collectors of Internal Revenue, and to impose a special tax on all persons who produce, import, manufacture, compound, deal in, dispense, sell, distribute, or give away opium or coca leaves, their salts, derivatives, preparations and for other purposes," approved December 7, 1914, and the amendments thereto, approved February 24, 1919, then that the said Act, to that extent, is unconstitutional, null and void, and of no effect. Petitioner begs leave to refer to his brief, filed herewith, in explanation and elucidation of the contention that said second count fails to state an offense, and that the Act of Congress upon which the indictment is based is unconstitutional.

Your petitioner believes that the aforesaid judgment of the Circuit Court of Appeals is erroneous, and that this Honorable Court should require the said case to be certified to it for its review and determination, in conformity with the provisions of the Act of Congress in such cases made and provided.

WHEREFORE, your petitioner respectfully prays that a writ of *certiorari* may be issued out of and under

the seal of this court, directed to the United States Circuit Court of Appeals, for the Ninth Circuit, commanding the said court to certify and send to this court, on a day certain to be therein designated, a full and complete transcript of the record and all proceedings of the said Circuit Court of Appeals in the said case therein, entitled, Charles O. Linder, plaintiff in error, vs. The United States of America, defendant in error, No. 3982, to the end that the said case may be reviewed and determined by this court as provided in Sec. 6 of the Act of Congress, entitled, "An Act to establish Circuit Courts of Appeals and to define and regulate in certain cases the jurisdiction of the courts of the United States, and for other purposes," approved May 3, 1891, or that your petitioner may have such other or further relief or remedy in the premises as to this court may seem appropriate and in conformity with the said Act, and that the said judgment of the said Circuit Court of Appeals in the said case, and every part thereof, may be reversed by this Honorable Court.

And your petitioner will ever pray.

W. H. PLUMMER,

TURNER, NUZUM & NUZUM.

GEORGE TURNER,

Of Counsel.

UNITED STATES OF AMERICA, }
STATE OF WASHINGTON, } ss.
COUNTY OF SPOKANE. }

CHARLES O. LINDER, being first duly sworn,
deposes and says: I am the petitioner in the above
and foregoing petition; I have read the said petition,
know the contents thereof, and believe the same to
be true.

CHARLES O. LINDER.

Subscribed and sworn to before me this 20th day of
September, A. D. 1923.

F. E. COFFEEN,

Notary Public for the State of Washington,
Residing at Spokane, Washington.

(Notarial Seal)

SEP 27 1900

No. 188

W. H. STANLEY

SUPREME COURT

UNITED STATES

CHARLES A. CHANDLER

CHANDLER

PRINTED BY THE NATIONAL PRINTER OF THE UNITED STATES

IN THE
SUPREME COURT
OF THE
UNITED STATES

OCTOBER TERM, 1923

CHARLES O. LINDER,
Petitioner,

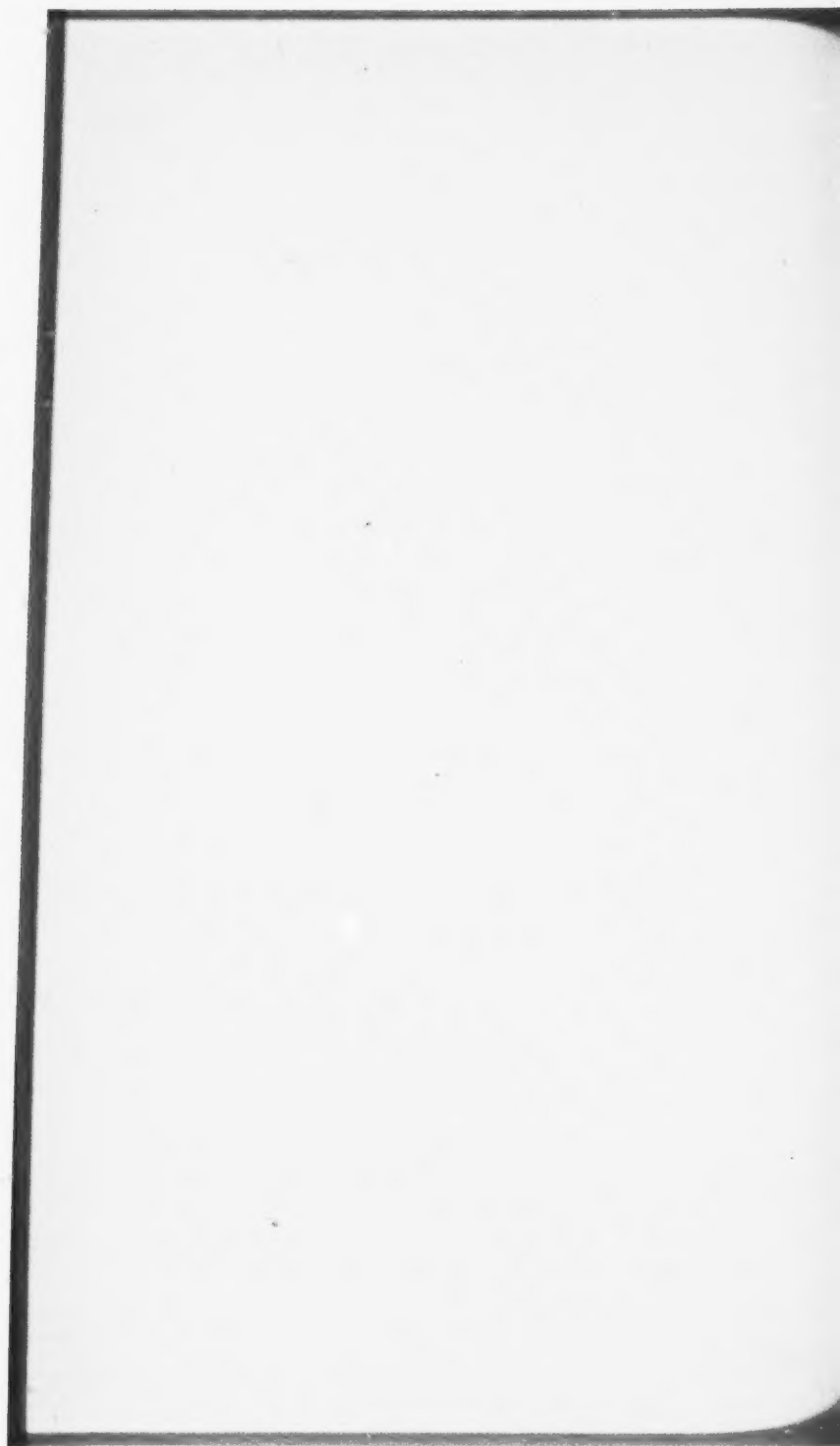
vs.

THE UNITED STATES OF
AMERICA,
Respondent.

BRIEF IN AID OF PETITION FOR WRIT OF
CERTIORARI.

W. H. PLUMMER,
TURNER, NUZUM & NUZUM,
Attorneys for Petitioner.

GEORGE TURNER,
of Counsel.



STATEMENT.

The defendant was convicted on the second count of an indictment containing three counts and acquitted on the first and third counts. The second count reads as follows:

"COUNT II. And the Grand Jurors aforesaid upon their oaths do further present:

That CHARLES O. LINDER, whose other or true name is to the Grand Jurors unknown, hereinafter in this indictment called the defendant, late of the County of Spokane, State of Washington, heretofore, to-wit: on or about the first day of April, 1922, at Spokane, in the Northern Division of the Eastern District of Washington, and within the jurisdiction of this Court, did then and there violate the Act of December 17, 1914, entitled 'An Act to provide for the registration of, with Collectors of Internal Revenue, and to impose a special tax upon all persons who produce, import, manufacture, compound, deal in, dispense, sell, distribute, or give away opium or coca leaves, their salts, derivatives, preparations, and for other purposes,' as amended February 24, 1919, in that he did then and there knowingly, wilfully and unlawfully sell, barter and give to Ida Casey a compound, manufacture and derivative of opium, to-wit: one (1) tablet of morphine and a compound, manufacture and derivative of coca leaves, to-wit: three (3) tablets of cocaine, not in pursuance of any written order of Ida Casey on a form issued for that purpose by the Commissioner of Internal Revenue of the United States; that the defendant was a duly licensed physician and registered under the Act; that Ida Casey was a person addicted

to the habitual use of morphine and cocaine and known by the defendant to be so addicted; that Ida Casey did not require the administration of either morphine or cocaine by reason of any disease other than such addiction; that the defendant did not dispense any of the drugs for the purpose of treating any disease or condition other than such addiction; that none of the drugs so dispensed by the defendant was administered to or intended by the defendant to be administered to Ida Casey by the defendant or any nurse, or person acting under the direction of the defendant; nor were any of the drugs consumed or intended to be consumed by Ida Casey in the presence of the defendant, but that all of the drugs were put in the possession or control of Ida Casey with the intention on the part of the defendant that Ida Casey would use the same by self-administration in divided doses over a period of time, the amount of each of said drugs dispensed being more than sufficient or necessary to satisfy the craving of Ida Casey therefor if consumed by her all at one time; that Ida Casey was not in any way restrained or prevented from disposing of the drugs in any manner she saw fit and that the drugs so dispensed by the defendant were in the form in which said drugs are usually consumed by persons addicted to the habitual use thereof to satisfy their craving therefor and were adapted for consumption. Contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States."

ARGUMENT.

FIRST.

The indictment follows literally that set out in United States vs. Behrman, 258 U. S. 280, except that the quantity of the drug dispensed in that case by and through a single prescription was 150 grains heroin, 360 grains morphine and 210 grains cocaine. In this case the quantity dispensed was one tablet of morphine and three tablets of cocaine. The quantity contained in each of the tablets is not alleged, but the term tablet is well understood. The Standard Dictionary defines tablet as "a definite portion or weight of drug brought by pressure and the addition of a gum into a solid form convenient for administering." A tablet, then, must be taken to contain such quantity of the drug as is appropriate to a single dose.

We submit that there is nothing in the indictment to negative that the drugs were dispensed in good faith in the ordinary course of professional practice. It is a well known fact that one of the means of treating addiction to morphine, or any of the habit forming drugs, is the administration of diminishing quantities of the drug until the addict is finally weaned away from the habit. The Internal Revenue Bureau calls

this the "reductive ambulatory treatment of addiction." That Bureau, moreover, while not giving its approval to the so-called "reductive ambulatory treatment" does recognize the propriety and necessity of administering the drug to addicts in certain cases. In a circular to narcotic agents, dated May 21, 1923, signed by R. A. Haynes, Prohibition Commissioner, and approved by D. H. Blair, Commissioner of Internal Revenue, it is said:

"Addicts suffering from senility or the infirmities attendant upon old age, and who are confirmed addicts of years' standing may be, for the purpose of enforcing the law, treated as addicts suffering from incurable diseases. In such cases, where narcotic drugs are necessary in order to sustain life, a reputable physician may prescribe or dispense the minimum amount necessary to meet the absolute needs of the patient."

There is nothing in the indictment which negatives that the drugs were dispensed as a part of such a treatment of the addict, Ida Casey. On the contrary, the allegation that "defendant did not dispense any of the morphine for the purpose of treating any disease or condition other than such addiction," raises the necessary inference that the drug was dispensed for the purpose of treating such addiction; an inference which is strengthened by the further allegation that the drug was dispensed with the "intention that Ida Casey would

use the same by self administration in divided doses extending over a period of time."

As we read the case of United States vs. Behrman, *supra*, the indictment in which case was taken as a model in this, it was only the extraordinary quantity of the drug dispensed in that case—three thousand ordinary doses—that enabled the court to find in the acts charged in the indictment on infraction of the law. Mr. Justice Day said in that case:

"It may be admitted that to prescribe a single dose, or even a number of doses, may not bring a physician within the penalties of the act."

Mr. Justice Holmes, in his dissenting opinion, concurred in by Mr. Justice Brandies and Mr. Justice McReynolds, could not see, even in the large quantity alleged to have been dispensed, an infraction of the Act. He said:

"The indictment, for the very purpose of raising the issue that divides the court, alleges in terms that the drugs were intended by the defendant to be used by King in divided doses over a period of several days. The defendant was a licensed physician and his part in the sale was the giving of prescriptions for the drugs. In view of the allegation that I have quoted, and the absence of any charge to the contrary, it must be assumed that he gave them in the regular course of his practice, and in good faith."

But the majority of the court found in the unusual and unnecessary quantity of the drug prescribed, evidence to the contrary, and so held. We think the language of Mr. Justice Holmes strictly applicable to the present indictment, as also the qualifying language of Mr. Justice Day, and that we need not recur to the terms of the statute and the ordinary principles of criminal pleading in aid of our contention that the indictment in the case states no offense.

If the indictment states no offense, then we submit certiorari ought to issue. This court has granted the writ for the purpose of settling the proper practice in indictments in the Territory of Alaska.

Summers vs. United States, 231 U. S. 92.

Indictments for infractions of the narcotic act are much more numerous in the courts of the United States than indictments in Alaska, and whether an indictment in the language of that set out in the Behrman case is sufficient to charge an offense where the quantity of the drug dispensed is such as might reasonably be prescribed for the cure or necessary alleviation of an addict is important to be settled, especially in view of the somewhat uncertain intimation given in the Behrman

case. Indeed, misapprehension of intimations given by this court, leading to an erroneous decision in the lower court has been considered sufficient to justify the granting of the writ.

Grigsley vs. Russell, 222 U. S. 149.

The District Attorney and lower court in this case evidently considered the Behrman case as an authority for the form of indictment employed, although the quantity of drug dispensed was not unreasonable.

SECOND.

If the indictment states an offense within the statute, then we submit that the statute to that extent is unconstitutional.

The Narcotic Act of December 17, 1914, as amended February 24, 1919, is a revenue act, and the amendment of 1919 accentuates the revenue features of the act. The act, manifestly, was not intended to trench on the police power of the states, and ought not to be given an interpretation which would bring within its purview an act the cognizance of which properly belongs to the states. While this view is plainly inferable from the language of this court in *United States vs. Jin Fuey Moy*, 241 U. S. 394, and *United States vs. Doremus*, 249 U. S. 86, yet the lower courts almost

uniformly try these narcotic cases on the theory that the purpose of the statute was to punish physicians and others dispensing morphine or other narcotics to satisfy the cravings of drug addicts, even where all the revenue features of the act have been complied with, as registration, payment of the tax, and the making and keeping of the records required by the act. We submit that the United States has nothing to do with such acts. Whether the health and morals of their people require that such practices be repressed by penal sanction is for the states alone to determine. It seems to us, and we submit the suggestion with great deference, in view of certain expressions of this court, that Congress, under the guise of a taxation act, intended to provide such a system of taxation and registration as would secure publicity in the dispensation of narcotic drugs, accessible at all times, not only to its own officers, but to those of the states and the lesser municipalities, in order that the states, which alone have the right to determine to what extent such traffic imperils the health and morals of the people, and how far it ought to be limited, restrained or regulated by penal sanctions, might at all times have data to enable them to perform that office, and that that was as far as Congress intended to go, because it was as far as it could go, and that the penal provisions of the

act were all intended to be directed to the taxation and registration and publicity features. It follows, if this view be correct, that an act not trenching on one or the other of the purposes aforesaid cannot be within the purview of the act, or within the purview of the Constitution. Now what is the nature of the act charged in the indictment, giving the indictment the widest scope claimed for it? Simply that the defendant, being a registered physician, dispensed a small quantity of narcotic drugs to gratify the appetite of an addict. If the court will look into the record it will find that the case was submitted to the jury on the sole question: "Were these drugs dispensed in good faith, within the proper bounds of professional practice, or were they knowingly dispensed for the purpose of catering to the appetite or satisfying the cravings of one addicted to the use of narcotics?" The court, in giving that instruction, was following its understanding of the offense charged in the indictment. Where the quantity dispensed was large, as in the Behrman case, the taxation and registration features of the act were infringed by putting narcotic drugs into the hands of unregistered and unlicensed persons, who might dispense the same without paying the tax, and without the registration features intended to secure publicity as to all dealings in such drugs. It is

true that Mr. Justice Day said in the Behrman case:

"Such so-called prescriptions could only result in the *gratification of a diseased appetite for these pernicious drugs*, or result in an unlawful parting with them to others, in violation of the act as heretofore interpreted in this court," etc.

But the constitutionality of the statute was not in question in that case, nor the question of the competency of Congress to punish a physician for the simple act of ministering to a diseased appetite for narcotic drugs. We submit that the record shows that defendant was charged and tried for an act not within the competency of Congress to punish, and which, on a proper construction of the law, Congress did not intend to punish.

The scheme of the act, namely, to make the selling or giving away of the drug in all cases an offense with an exception in favor of a registered physician who prescribes or administers "in the course of his professional practice only," aided by the holding of the courts that the prescription or administration must be in good faith as a medicine, and not to satisfy the cravings of an addict, is equivalent to a direct provision in the act that any physician, even though properly registered, and even though he keep all the records provided by the act, who prescribes or administers to

an addict to satisfy his cravings, shall be guilty of an offense and punishable as provided by Section 8 of the act. The constitutionality of that feature of the act has never been before this court.

In *United States vs. Doremus*, 249 U. S. 86, the Harrison Narcotic Act was sustained, as applied to that case, by a majority of this court, five to four. But that was a case where the quantity of the drug dispensed was unreasonably large, and where opportunity was thus given to unauthorized persons to sell and dispose of the drug without complying with the provisions of the act. The decision of the court appears to have been placed on that ground. After pointing out that acts proceeded against under the law as crimes must have some relation to the raising of revenue, the court proceeds:

"Congress, with full power over the subject, short of arbitrary and unreasonable action, which is not to be assumed, inserted these provisions in an act specifically providing for the raising of revenue. Considered of themselves, we think they tend to keep the traffic aboveboard and subject to inspection by those authorized to collect the revenue. They tend to diminish the opportunity of unauthorized persons to obtain the drugs and sell them clandestinely without paying the tax imposed by the Federal law. This case well illustrates the possibility which may have induced Congress to insert the provisions limiting sales to registered

dealers, and requiring patients to obtain these drugs as a medicine from physicians or upon regular prescriptions. Ameris, being, as the indictment charges, an addict, may not have used this great number of doses for himself. He might sell some to others without paying the tax; at least, Congress may have deemed it wise to prevent such possible dealings because of their effect upon the collection of the revenue."

It can hardly be said that the case is authority for bringing within the law, as a constitutional exercise of power, the act proceeded against in this case, the only effect of which was to cater to the appetite of an habitual drug user.

The succeeding case, *Webb vs. United States*, 249 U. S. 96, presented the question whether the first sentence of Section 2 of the Harrison Act, which prohibits retail sales of morphine by druggists to persons who have no physician's prescriptions, who have no order blank therefor, and who cannot obtain an order blank because not of the class to which such blanks are allowed to be used, was a constitutional exercise of power? That question was answered in the affirmative, and very properly so; but that is not the question presented here. More difficulty is found when considering the third question propounded in the *Webb* case, namely, whether the order of a physician for morphine to an habitual user, not issued in the course

of professional treatment in an attempted cure of the habit, but for the purpose of catering to the desire of the addict for the drug, could be considered a physician's prescription under exception (b) of Section 2 of the act, which question was answered in the negative. It may be said of the pronouncement of the court on that question that the mind of the court in answering it was not directed to any constitutional question, but simply to the construction of the language of the Narcotic Act. Certainly in the preceding case the court was careful to confine the scope of its decision to acts which Congress might constitutionally prohibit because necessary to the effectual enforcement of the Narcotic Act as a revenue measure.

In the later case of *Jin Fuey Moy vs. United States*, 254 U. S. 189, where language is used which would indicate that the law was intended to make criminal the act of a physician in dispensing narcotic drugs to a dealer, or *to satisfy the craving of an addict*, no constitutional question was raised. That case was again one in which a large and unreasonable quantity of the drug had been dispensed, and in which it was quite possible for the writer of the opinion to class in the same category, without thinking of the constitutional difficulty, an act which impaired the integrity of the

law, with an act which could only be made criminal by the legislature of a sovereign state.

Finally, the case of *United States vs. Behrman*, 258 U. S. 280, considered nothing except the sufficiency of the indictment in that case, and as we have heretofore seen, the indictment was sustained because of the enormously large quantity of the drug alleged to have been dispensed by the physician, thus affecting the revenue features of the law. It is true that Mr. Justice Day concludes the opinion by linking together as objectionable features of the acts charged in the indictment, "the gratification of a diseased appetite for these pernicious drugs," and "an unlawful parting with them to others in violation of the act," but since the learned Justice was considering the language of the narcotic act alone, the difficulty of including the two in the same constitutional class may not have occurred to him.

It appears then that this court has never had before it or considered or determined the precise question presented here, and if that be true, this case, we submit, is one calling for the revisory power of this court by the writ of certiorari. Not all of the District Courts, but most of them, are making the test of guilt in these narcotic cases to depend on whether the narcotic drug

was dispensed by the physician in good faith as a medicine, or was dispensed to satisfy the cravings of drug addicts, thus enforcing in their several districts a policy as to health and morals, which it belongs to the states alone to declare and enforce. As an illustration of the manner in which the narcotic act is considered and enforced in the District Courts, we cite, in addition to the instant case, *Manning vs. United States*, 287 Federal, 800; *Melanson vs. United States*, 256 Federal, 783; *Thompson vs. United States*, 258 Federal, 196.

If it be thought that the general language used in some of the cases in this court is such as to logically foreclose the question here raised, then it would seem, in view of the fact that there was a dissent by four out of the nine justices in each of the cases where the constitutional question was raised, that the matter ought now to be considered *de novo*, and an authoritative pronouncement made which will set the question at rest one way or the other.

THIRD.

There is one feature of this case to which candor compels us to call the attention of the court. The indictment was not attacked in the District Court, nor in

the Circuit Court of Appeals. But we understand the law to be that after judgment against an accused in a criminal case, if the indictment be bad in substance, or the judgment be erroneous, or any other defect in substance appears upon the face of the record, it is the office of a writ of error to open the case up for such judgment by an appellate court, as might and ought to have been rendered in the court below. Such was the common law. Archholds Crim. Practice & Pleading, Pomeroy's Notes, Vol. 1, p. 615.

We confess that we have not found, after careful examination of the decisions of this court, any statement of a similar rule, except inferentially, as in *Frisbie vs. U. S.* 157, *U. S.* 165. There are, of course, many decisions to the effect that the question must have been raised below, where appeals are brought to this court on the ground that the lower court was without jurisdiction or that the case involved the construction or application of the constitution of the United States. But where a writ of error is allowable as a matter of course, what questions it brings up and the limitations, if any, on the appellate court in hearing and determining them, depends on different considerations.

It has always been the rule of this court in civil cases that "anything appearing upon the record, which

would have been fatal upon a motion in arrest of judgment is equally fatal upon writ of error." Per Marshall, Ch. J. in *Slocum vs. Pomeroy*, 6 Cranch. 224. There appears to be every reason why the rule should equally apply in criminal cases.

We find, however, the rule in criminal cases thus stated by Circuit Justice Gilbert of the Ninth Circuit:

"While neither of these motions is assignable as error in a Federal Appellate Court, such courts must always entertain the question whether an indictment charges an offense, and the question of the jurisdiction of the court below."

Borlaske vs. United States, 279 Federal, 1.

If it be thought that the Supreme Court, as matter of practice, ought not to entertain on certiorari questions not raised below, we submit that the power to grant the writ, either before or after the judgment below, evidences that the exercise of the power was not intended to be limited by any question of mere practice.

Respectfully submitted,

W. H. PLUMMER,

TURNER, NUZUM & NUZUM,

Attorneys for Petitioner.

GEORGE TURNER,

of Counsel.

JAN 20 1925

WM. R. STANSBURY
CLERK

Supreme Court of the United States

OCTOBER TERM, 1924

No. 183

C. O. LINDER, PETITIONER

vs.

THE UNITED STATES OF AMERICA

*On a Writ of Certiorari to the United States Circuit
Court of Appeals for the Ninth Circuit.*

BRIEF FOR PETITIONER

TURNER, NUZUM & NUZUM,

Spokane, Washington,

Attorneys for Petitioner.

GEORGE TURNER,

Of Counsel.

Supreme Court of the United States

OCTOBER TERM, 1924

No. 183

C. O. LINDER, PETITIONER

vs.

THE UNITED STATES OF AMERICA

*On a Writ of Certiorari to the United States Circuit
Court of Appeals for the Ninth Circuit.*

STATEMENT.

This case comes here on certiorari to the Circuit Court of Appeals for the Ninth Circuit. The error relied on in the case is that the indictment fails to state facts sufficient to constitute an offense under the laws of the United States. There was no specification of error to that effect in the court below, and we do not understand that a formal assignment of error is required in this court in a case here on certior-

ari, other than as may appear in the record sent up. On the question of our right to urge here that the indictment fails to state an offense, notwithstanding failure to urge the point below, we rely on our brief in aid of the petition for certiorari, and beg the court to refer to the arguments therein as if included in this brief.

The petitioner was convicted on the second count of an indictment which, omitting formal parts, charged:

"That Charles O. Linder * * * did then and there knowingly, wilfully and unlawfully sell, barter and give to Ida Casey, a compound, manufacture and derivative of opium, to-wit: One (1) tablet of morphine and a compound, manufacture and derivative of coca leaves, to-wit: Three (3) tablets of cocaine, not in pursuance of any written order of Ida Casey on a form issued for that purpose by the Commissioner of Internal Revenue of the United States; that the defendant was a duly licensed physician and registered under the act; that Ida Casey was a person addicted to the habitual use of morphine and cocaine and known by the defendant to be so addicted; that Ida Casey did not require the administration of either morphine or cocaine by reason of any disease other than such addiction; that the defendant did not dispense any of the drugs for the purpose of treating any disease or conditions other than such addiction; that none of the drugs so dispensed by the defendant was administered to or intended by the defendant to be administered to Ida Casey by the defendant or any nurse, or person acting under the direction

of the defendant; nor were any of the drugs consumed or intended to be consumed by Ida Casey in the presence of the defendant, but that all of the drugs were put in the possession or control of Ida Casey with the intention on the part of the defendant that Ida Casey would use the same by self-administration in divided doses over a period of time, the amount of each of said drugs dispensed being more than sufficient or necessary to satisfy the craving of Ida Casey therefor if consumed by her all at one time; that Ida Casey was not in any way restrained or prevented from disposing of the drugs in any manner she saw fit and that the drugs so dispensed by the defendant were in the form in which said drugs are usually consumed by persons addicted to the habitual use thereof to satisfy their craving therefor and were adapted for consumption." (Transcript of Record, pp. 3, 4, 5.)

The said count is predicated on Section 2 of the Act of Congress (commonly called the Harrison Act), approved December 17, 1914, 38 Stat. L. 785. That Section, so far as it is material to the case, reads as follows:

"Sec. 2. That it shall be unlawful for any person to sell, barter, exchange, or give away any of the aforesaid drugs except in pursuance of a written order of the person to whom such article is sold, bartered, exchanged, or given, on a form to be issued in blank for that purpose by the Commissioner of Internal Revenue. Every person who shall accept any such order, and in pursuance thereof, shall sell, barter, exchange, or give away any of the aforesaid drugs,

shall preserve such order for a period of two years in such a way as to be readily accessible to inspection by any officer, agent, or employee of the Treasury Department duly authorized for that purpose, and the State, Territorial, District, municipal, and insular officials named in Section Five of this Act. Every person who shall give an order as herein provided to any other person for any of the aforesaid drugs shall, at or before the time of giving such order, make or cause to be made a duplicate thereof on a form to be issued in blank for that purpose by the Commissioner of Internal Revenue, and in case of the acceptance of such order, shall preserve such duplicate for said period of two years in such a way as to be readily accessible to inspection by the officers, agents, employees, and officials hereinbefore mentioned. Nothing contained in this Section shall apply—

(a) To the dispensing or distribution of any of the aforesaid drugs to a patient by a physician, dentist, or veterinary surgeon registered under this Act in the course of his professional practice only: Provided, That such physician, dentist, or veterinary surgeon shall keep a record of all such drugs dispensed or distributed, showing the amount dispensed or distributed, the date, and the name and address of the patient to whom such drugs are dispensed or distributed, except such as may be dispensed or distributed to a patient upon whom such physician, dentist, or veterinary surgeon shall personally attend; and such record shall be kept for a period of two years from the date of dispensing or distributing such drugs, subject to inspection, as provided in this Act.

(b) To the sale, dispensing, or distribution of any of the aforesaid drugs by a dealer to a consumer under and in pursuance of a written

prescription issued by a physician, dentist, or veterinary surgeon registered under this Act: Provided, however, That such prescription shall be dated as of the day on which signed and shall be signed by the physician, dentist, or veterinary surgeon who shall have issued the same; And provided further, That such dealer shall preserve such prescription for a period of two years from the day on which such prescription is filled in such a way as to be readily accessible to inspection by the officers, agents, employees, and officials hereinbefore mentioned."

The Harrison Act has since been amended in a number of particulars, but in no particular material to the present case.

In this brief we present three questions, namely:

First: Do the facts set up in the indictment constitute an offense under the Narcotic Act when the latter is properly construed?

Second: Do the facts set up constitute an offense under the construction of the Narcotic Act prevailing in the lower Federal Courts?

Third. If the Narcotic Act can be so construed as to make said facts an offense under either construction, is it a constitutional exercise of power?

ARGUMENT.

FIRST

Taking the worst side of it, the transaction set out in the indictment presents a case of the administration by a licensed physician of one morphine tablet and three cocaine tablets to a confirmed addict for the purpose of catering to the craving of the addict for such drugs.

The allegation of the indictment "that Ida Casey was not in any way restricted from disposing of the drugs in any manner she saw fit," etc., does not add anything material as showing a case in which the revenue features of the Act might be defeated. The indictment alleges in other parts that "Ida Casey was a person addicted to the habitual use of morphine and cocaine" * * * and "that all the drugs were put in the possession or control of Ida Casey with the intention on the part of the defendant that Ida Casey would use the same by self-administration in divided doses over a period of time," etc. That period of time in the case of an addict possessing only four tablets, according to the literature on the subject, would be very short, probably infinitesimal, because the tablets would all be used by the addict before the craving that induced their purchase would be satisfied. It

cannot be presumed, because it is contrary to the pathology of drug addiction, that the addict would part with any of the four tablets to another instead of using them herself. The allegation, therefore, is a mere form of words without substance. Moreover, the law contemplates (sub-section a, section 2) that the drugs may be put in possession of the patient for self-administration, when it excepts from the preceding prohibitions of the section, "*the dispensing or distribution of any of the aforesaid drugs to a patient by a physician,*" etc. The allegation in question then can raise no implication that the operation of the law might be prejudicially affected, because the law itself contemplates as lawful a situation in which the patient is "not in any way restrained or prevented from disposing of the drugs in any manner she saw fit," etc.

Now there is nothing, we submit, in the Narcotic Act, properly construed, that makes it an offense for a physician to alleviate the sufferings of an addict by administering to the latter narcotic drugs in quantities sufficient for the purpose. Section 2 of the Act makes it unlawful for any person to "sell, barter, exchange, or give away any of the aforesaid drugs except in pursuance of a written order of the person to whom such article is sold, bartered, exchanged or given, on a form to be issued in blank for that purpose by the

Commissioner of Internal Revenue," etc. Sub-section (a) of the section then excepts from the above provision "the dispensing or distribution of any of the aforesaid drugs to a patient by a physician, dentist, or veterinary surgeon registered under the Act in the course of his professional practice only." The lower courts have engrafted on this exception without any sufficient reason the further requirement that the dispensing or distribution must not only have been in the course of the professional practice of the physician, but that it must have been dispensed or distributed in good faith as a medicine, and not to satisfy the cravings of an addict. The prevailing doctrine in the lower federal courts is that set forth by Judge Rudkin in his instructions to the jury in this case, in the following language:

"Were these drugs dispensed in good faith, within the proprietary bounds of professional practice, or were they knowingly dispensed for the purpose of catering to the use of one addicted to the use of narcotics? That is the principal question in this case." (Transcript of Record, p. 169.)

Other cases holding the same doctrine are *Manning vs. United States*, 287 Federal, 800; *Melanson vs. United States*, 356 Federal, 783; *Thompson vs. United States*, 258 Federal, 196.

The term "addict" is not used in the entire Narcotic Act, and the only mention therein of "good faith" is found in Section 8, where, after making it unlawful for any person not registered to have in possession or under his control any of the aforementioned drugs, a number of exceptions are made, among which is an exception in favor of those having possession of drugs which may "have been prescribed in good faith by a physician, dentist or veterinary surgeon registered under this Act." Apart from the difficulty of applying provisions relating to one offense to another separate and distinct offense, there are two other very good reasons why the good faith provision in the above exception can have no reference to or influence in construing the exception in favor of registered physicians provided for by sub-section (a) of Section 2. The first is the decision of this court in *Jin Fuey Moy vs. United States*, 241 U. S. 394, in which it was determined that the provision of Section 8 against having drugs in possession must be construed as levelled at those only required to register and entitled to register and to procure order blanks, and not to the common, ordinary run of citizens, and consequently the good faith provision can have no reference to the dispensing and distribution of drugs to the latter class, because the latter class are not entitled to register or to procure order blanks.

Second. An exception to the having drugs in possession cannot under the ordinary rules of construction be imported in to the exception in favor of registered physicians dispensing or distributing the drugs. The two things are entirely different in the considerations which govern them and in the gravity of the Act as tending to impair the revenue features of the law. A person entitled to register, but not registered, having the drugs in possession, may very well be considered as presumptively engaged in their clandestine distribution, and therefore to be protected in their possession only by a good faith prescription, and the good faith of the prescription as to him be matter of proper concern. A registered physician, on the other hand, dispensing the drugs to patients and keeping the record thereof required, is above board at least, whatever the motive for the dispensing the drugs, and no harm can accrue to the administration of the law by his act, or if harm come, it is infinitesimal, and not worthy of consideration under the maxim *De minimus non curet lex*.

Now if the exception found in Section 2 stands alone, and is not influenced by anything except the general purpose of the law, what dispensing or distribution of drugs to patients may be reasonably con-

sidered as "in the course of his professional practice only?" That question, we submit, cannot be answered by the application of any hard and fast rule. It is the business of the physician to alleviate the pain and suffering of patients as well as to effectuate their cure. If we are to believe the literature on the subject, the suffering of an addict caused by deprivation of his customary drug is as intense as any suffering caused by disease. It is perhaps more so in the insistent demand for relief. Why should not the physician in the course of his ordinary practice take cognizance of that fact and administer temporary relief? Why should the law be construed as intended to prohibit such an act of mercy? It is, we submit, a strained construction of the law to hold that the language in question was intended to prohibit such an act, especially in view of the fact that the entire frame work of the law shows that it was intended, not to regulate health and morals because Congress has no authority or duty in that direction, but to make regulations with respect to the drug traffic which would keep it above board for the benefit of states and municipalities which do have authority and duty in that direction. The latter fact ought to have influence in the construction of the language in question. If Congress had undertaken in terms to make it an offense for any

person to administer drugs to an addict to satisfy the cravings of the latter, it is at least questionable if such a provision would not be void as invading the reserved powers of the states. Now the language of the Act cannot be given a construction which would make it do indirectly what it could not do directly. In the case of *Jin Fuey Moy vs. United States*, *supra*, the positive terms of the Narcotic Act were limited in their fair meaning in deference to doubts of their constitutionality if given full force and effect. Here it is not necessary to limit the fair meaning of the language of the Act. It is only necessary to refuse to stretch the language of the Act beyond its fair meaning so as to make it include acts never contemplated by the law-makers. We submit that the transaction set out in the indictment fails to state any offense under the Narcotic Act when the latter is properly construed.

SECOND

We submit that the indictment states no offense even under the construction of the Narcotic Act prevailing in the lower courts. The indictment follows literally that set out in *United States vs. Behrman*, 258 U. S. 280, except that the quantity of the drug dispensed in that case by and through a single pre-

scription was 150 grains heroin, 360 grains morphine and 210 grains cocaine. In this case the quantity dispensed was one tablet of morphine and three tablets of cocaine. The quantity contained in each of the tablets is not alleged, but the term tablet is well understood. The Standard Dictionary defines tablet as "a definite portion or weight of drug brought by pressure and the addition of a gum into a solid form convenient for administering." A tablet, then, must be taken to contain such quantity of the drug as is appropriate to a single dose.

We submit that there is nothing in the indictment to negative that the drugs were dispensed in good faith in the ordinary course of professional practice. It is a well-known fact that one of the means of treating addiction to morphine, or any of the habit-forming drugs, is the administration of diminishing quantities of the drug until the addict is finally weaned away from the habit. The Internal Revenue Bureau call this the "reductive ambulatory treatment of addiction." That Bureau, moreover, while not giving its approval to the so-called "reductive ambulatory treatment" does recognize the propriety and necessity of administering the drug to addicts in certain cases. In a circular to narcotic agents, dated May 21, 1923, signed by R. A. Haynes, Prohibition Commissioner, and approved by

D. H. Blair, Commissioner of Internal Revenue, it is said:

"Addicts suffering from senility or the infirmities attendant upon old age, and who are confirmed addicts of years' standing may be, for the purpose of enforcing the law, treated as addicts suffering from incurable diseases. In such cases, where narcotic drugs are necessary in order to sustain life, a reputable physician may prescribe or dispense the minimum amount necessary to meet the absolute needs of the patient."

There is nothing in the indictment which negatives that the drugs were dispensed as a part of such a treatment of the addict, Ida Casey, and that she was a confirmed addict of years' standing and suffering from senility or the infirmities of age. On the contrary, the allegation that "defendant did not dispense any of the morphine for the purpose of treating any disease or condition other than such addiction," raises the necessary inference that the drug was dispensed for the purpose of treating such addiction; an inference which is strengthened by the further allegation that the drug was dispensed with the "intention that Ida Casey would use the same by self-administration in divided doses extending over a period of time."

As we read the case of *United States vs. Behrman, supra*, the indictment in which case was taken as a model in this, it was only the extraordinary quantity

of the drug dispensed in that case—three thousand ordinary doses—that enabled the court to find in the acts charged in the indictment an infraction of the law. Mr. Justice Day said in that case:

“It may be admitted that to prescribe a single dose, or even a number of doses, may not bring a physician within the penalties of the Act.”

Mr. Justice Holmes, in his dissenting opinion, concurred in by Mr. Justice Brandies and Mr. Justice McReynolds, could not see, even in the large quantity alleged to have been dispensed, an infraction of the Act. He said:

“The indictment for the very purpose of raising the issue that divides the court, alleges in terms that the drugs were intended by the defendant to be used by King in divided doses over a period of several days. The defendant was a licensed physician and his part in the sale was the giving of prescription for the drugs. In view of the allegation that I have quoted, and the absence of any charge to the contrary, it must be assumed that he gave them in the regular course of his practice, and in good faith.”

But the majority of the court found in the unusual and unnecessary quantity of the drug prescribed, evidence to the contrary, and so held. We think the language of Mr. Justice Holmes strictly applicable to the present indictment, as also the qualifying language of Mr. Justice Day, and that we need not recur to the

terms of the statute and the ordinary principles of criminal pleading in aid of our contention that the indictment in the cases states no offense, no matter what construction be given to the statute in other respects.

THIRD

The Narcotic Act is unconstitutional if susceptible of the construction of its terms prevailing in the lower courts. The power of the states to regulate their own domestic concerns is exclusive, and any effort of the national government to intervene in that particular domain of power is unconstitutional and of no effect. The above proposition has been stated so often by this court, and by the state courts, and is so well understood as a principle of our dual form of government, that it would be academic to cite in its support any considerable number of the available authorities.

Congress may, however, legislate in aid of some express grant of national power, such as the power to tax, regulate commerce, to establish post roads, to raise armies and make war, and may make regulations and impose penalties in aid of such grant which may seem to intrude on the reserved power of the states, but the intrusion is apparent rather than real. Congress in doing that does not intend or attempt to regu-

late the health or morals of the states. It is simply legislating in aid of the national power, and in that domain of power its authority is equally supreme. Sometimes, however, the legislation of Congress in aid of the national power has no relation to it, no real influence in aiding or promoting it. In such cases, if the legislation trenches on the reserved power of the states it must fall, because the Federal necessity for it is non-existent.

We take it that this principle governs also where it is sought in a criminal prosecution to bring within the purview of the federal law a transaction which the language of the law is broad enough to include, but which, by reason of its nature is beyond the power of Congress to regulate or prohibit. Whether the holding of the courts in such a case ought to be that the law is unconstitutional in part, or that the transaction not being within the power of Congress to regulate or prohibit is impliedly excepted from the prohibition found in the law, it is not material to consider, because either holding will answer the purposes of the review here sought by the petitioner.

At the risk of appearing tedious, we notice three cases in this court, two of them early cases, and one a late case, in which the foregoing principles were illustrated, namely, License Tax Cases, 5 Wallace, 462; United States vs. Dewitt, 9 Wallace, 41 and Keller vs. United States, 213 U. S. 138.

In the first of the above cases Mr. Justice Miller described the exclusive power of the states thus:

"We come now to examine a more serious objection to the legislation of Congress in relation to the dealings in controversy. It was argued for the defendants in error that a license to carry on a particular business gives an authority to carry it on; that the dealings in controversy were parcel of the internal trade of the State in which the defendants resided; that the internal trade of a State is not subject, in any respect, to legislation by Congress, and can neither be licensed nor prohibited by its authority; that licenses for such trade, granted under acts of Congress, must therefore, be absolutely null and void; and, consequently, that penalties for carrying on such trade without such license could not be constitutionally imposed.

This series of propositions, and the conclusion in which it terminates, depends on the postulate that a license necessarily confers an authority to carry on the licensed business. But do the licenses required by the acts of Congress for selling liquor and lottery tickets confer any authority whatever?

It is not doubted that where Congress possesses

constitutional power to regulate trade or intercourse, it may regulate by means of licenses as well as in other modes; and, in case of such regulation, a license will give to the licensee authority to do whatever is authorized by its terms.

Thus, Congress having power to regulate commerce with foreign nations, and among the several States, and with the Indian tribes, may, without doubt, provide for granting coasting licenses, licenses to pilots, licenses to trade with the Indians, and any other licenses necessary or proper for the exercise of that great and extensive power; and the same observation is applicable to every other power of Congress, to the exercise of which the granting of licenses may be incident. All such licenses confer authority, and give rights to the licensee.

But very different considerations apply to the internal commerce or domestic trade of the States. Over this commerce and trade Congress has no power of regulation nor any direct control. This power belongs exclusively to the States. No interference by Congress with the business of citizens transacted within a State is warranted by the Constitution, except such as is strictly incidental to the exercise of powers clearly granted to the legislature. The power to authorize a business within a State is plainly repugnant to the exclusive power of the State over the same subject. It is true that the power of Congress to tax is a very extensive power. It is given in the Constitution, with only one exception and only two qualifications. Congress cannot tax exports, and it must impose direct taxes by the rule of apportionment, and indirect taxes by the rule of uniformity. Thus limited, and thus only, it reaches every subject, and may be exercised at discretion. But it reaches only existing subjects. Congress

cannot authorize a trade or business within a State in order to tax it.

If, therefore, the licenses under consideration must be regarded as giving authority to carry on the branches of business which they license, it might be difficult, if not impossible, to reconcile the granting of them with the Constitution."

In the second case, Chief Justice Chase pointed out the vice of congressional enactments having no relation to the federal grant on which they were predicated, or too remote and uncertain in that regard, in the following language:

"It has been urged in argument that the provision under which this indictment was framed is within this exception; that the prohibition of the sale of the illuminating oil described in the indictment was in aid and support of the internal revenue tax imposed on other illuminating oils. And we have been referred to provisions, supposed to be analogous, regulating the business of distilling liquors, and the mode of packing various manufactured articles; but the analogy appears to fail at the essential point, for the regulations referred to are restricted to the very articles which are the subject of taxation, and are plainly adapted to secure the collection of the tax imposed; while, in the case before us, no tax is imposed on the oils the sale of which is prohibited. If the prohibition, therefore, has any relation to taxation at all, it is merely that of increasing the production and sale of other oils, and, consequently, the revenue derived from them, by excluding from the market the particular kind described.

This consequence is too remote and too uncertain to warrant us in saying that the prohibition is an appropriate and plainly adapted means for carrying into execution the power of laying and collecting taxes.

There is, indeed, no reason for saying that it was regarded by Congress as such a means, except that it is found in an act imposing internal duties. Standing by itself, it is plainly a regulation of police; and that it was so considered, if not by the Congress which enacted it, certainly the succeeding Congress, may be inferred from the circumstances, that while all special taxes on illuminating oils were repealed by the Act of July 20th, 1868, which subjected distillers and refiners to the tax on sales as manufacturers, this prohibition was left unrepealed.

As a police regulation, relating exclusively to the internal trade of the States, it can only have effect where the legislative authority of Congress excludes, territorially, all State legislation, as for example, in the District of Columbia. Within State limits, it can have no constitutional operation. This has been so frequently declared by this court, results so obviously from the terms of the Constitution, and has been so fully explained and supported on former occasions, that we think it unnecessary to enter again upon the discussion."

In the third of the cases cited, a statute having the general purpose of regulating immigration of aliens into the United States, made it an offense, among other things, to "keep, maintain, control, support or harbor in any house or other place, for the purpose of

prostitution, or for any other immoral purpose, an alien woman or a girl, within three years after she shall have entered the United States." In holding the action of Congress in that respect to be beyond its constitutional power, Mr. Justice Brewer, speaking for this court said:

"As to the suggestion that Congress has power to punish one assisting in the importation of a prostitute, it is enough to say that the statute does not include such a charge; the indictment does not make it; and the testimony shows, without any contradiction, that the woman Irene Bodi came to this country in November, 1905; that she remained in New York until October, 1907; then came to Chicago, and went into the house of prostitution which the defendants purchased in November, 1907, finding the woman then in the house; that she had been in the business of a prostitute only about ten or eleven months prior to the trial of the case in October, 1908, and that the defendants did not know her until November, 1907. In view of those facts, the question of the power of Congress to punish those who assist in the importation of a prostitute is entirely immaterial.

The act charged is only one included in the great mass of personal dealings with aliens. It is her own character and conduct which determines the question of exclusion or removal. The acts of others may be evidence of her business and character. But it does not follow that Congress has the power to punish those whose acts furnish evidence from which the government may determine the question of her expulsion. Every possible dealing of any citizen with the alien may have more or less induced her coming. But can it be within the power of Congress to control all

the dealings of our citizens with resident aliens? If that be possible, the door is open to the assumption by the national government of an almost unlimited body of legislation. By the census of 1900, the population of the United States between the oceans was, in round numbers, 76,000,000. Of these, 10,000,000 were of foreign birth, and 16,000,000 more were of foreign parentage. Doubtless some have become citizens by naturalization, but certainly scattered through the country there are millions of aliens. If the contention of the government be sound, whatever may have been done in the past, however, little this field of legislation may have been entered upon, the power of Congress is broad enough to take cognizance of all dealings of citizens with aliens. That there is a moral consideration in the special facts of this case, that the act charged is within the scope of the police power, is immaterial, for, as stated, there is in the Constitution no grant to Congress of the police power. And the legislation must stand or fall according to the determination of the question of the power of Congress to control generally dealings of citizens with aliens. In other words, an immense body of legislation, which heretofore has been recognized as peculiarly within the jurisdiction of the states, may be taken by Congress away from them. Although Congress has not largely entered into this field of legislation, it may do so, if it has the power. Then we should be brought face to face with such a change in the internal conditions of this country as was never dreamed of by the framers of the Constitution. While the acts of Congress are to be liberally construed in order to enable it to carry into effect the powers conferred, it is equally true that prohibitions and limitations upon those powers should also be fairly and reasonably enforced. *Fairbank vs. United States*, 181 U. S.

283, L. Ed. 862, 21 Sup. Ct. Rep. 648. To exaggerate in the one direction and restrict in the other will tend to substitute one consolidated government for the present Federal system. We should never forget the declaration in *Texas vs. White*, 7 Wall. 700, 725, 19 L. Ed. 227, 237, that 'the Constitution, in all its provisions, looks to an indestructible Union, composed of indestructible states.' ”.

This court has pronounced the Narcotic Act to be a revenue measure. It is bottomed on the constitutional power to levy taxes. Mr. Justice Holmes, in his opinion in *Jin Fuey Moy vs. United States*, *supra*, stated the contention of the government in that case thus:

“The government, on the other hand, contends that this act was passed with two others in order to carry out the international opium convention; that Congress gave it the appearance of a taxing measure in order to give it a coating of constitutionality, but that it really was a police measure that strained all the powers of the legislature,” etc.

The court in that case, however, avoided the issue by so limiting the language of the Act, as to avoid bringing within its terms a class of persons clearly included therein. In other cases where national legislation *strained the powers of the legislature*, this court, pursuant to a long line of decisions, has declared that

deference to a co-ordinate department of the government would not permit it to go behind the declared purposes of the legislation. Deference by this court to the legislative department of the government has become so firmly established, even in cases where the pretense of enforcing federal power was a transparent subterfuge, that it would be futile, and perhaps not entirely respectful, to now attack that view of judicial duty. But it is permissible, we believe, to suggest that a strict rule concerning the relation of a prohibited act to the federal grant of power on which it is predicated ought to be maintained by this court. Congress is every day, more and more, yielding to the meddling spirit that would draw every activity in life within the purview of its constitutional power, and unless such rule of decision is laid down and maintained, the doctrine that the states are supreme in matters of police will soon be completely overturned.

It is that doctrine that we are invoking in this case. If the mere catering to a diseased appetite in the matter of narcotic drugs, even where such catering has no tendency to impair the revenue features of the Narcotic Act, or so slight a tendency as to be negligible be held to be within the prohibition of that Act, then the said Act to that extent is clearly unconstitutional. And we submit that this court in measuring

the character of transactions to determine whether they really impair the revenue features of the law, is hampered by no consideration of deference to a coordinate department of the government, but should predicate its holding strictly on the reason of the thing. Moreover, it should not be astute to find reasons that would reconcile the prohibition of the law with the pretended federal purpose behind it. If the line of demarcation between federal and state power is to be maintained in its integrity that matter should be determined on broad lines of reason and common sense. We are not suggesting that this court has been governed in the past by any other line of reasoning. On the contrary, the cases in this court dealing with transactions alleged as coming under the Narcotic Law, have indicated a keen appreciation of the necessity of a real tendency inherent in such transactions to materially influence or effect the constitutional purposes of the federal law, if such transactions are to be considered as coming within the legitimate province of the law. The transaction here, as set out in the indictment, and as evidenced by the proofs in the record, presents a case of the administration by a licensed physician of one morphine tablet and three cocaine tablets to a confirmed addict for the purpose of catering to the appetite of the addict. Now can

it be said with reason that such a transaction, reprehensible as it is, has any tendency to defeat the revenue features of the Narcotic Act? Even if the allegation of the indictment that "Ida Casey was not restrained from disposing of the drugs in any manner she saw fit," be considered one of substance, is not that in all cases one of the necessary incidents of the administration of such drugs by a physician and contemplated by the law, and without that, is not the possibility suggested by the allegation so remote and so inconsequential where the quantity of the drugs are as small as in this case, that it ought not to be considered as an act materially affecting the revenue features of the law? It seems so to us. The not unnatural tendency to sustain prosecutions brought for acts indicating moral perversion has induced many courts to lose sight of grave constitutional questions involved in such cases, but this court has not in the past given way to that tendency, and we feel assured will not do so in this case. It has been well said that "Hard cases make bad law," but that tendency ought to be doubly resisted by a court whose greatest function is to keep the government within its constitutional limits, where the tendency is not only to make bad law, but to make bad constitutional law. There is a twilight zone between transactions which really impair the integrity

of the law and transactions in which that tendency is so slight as to come within the *de minimus* maxim, and acts within that zone, we submit, ought on every conceivable ground, to be held within the exclusive power of the states to regulate and prohibit.

The case of United States vs. Behrman, 258 U. S. 280 (the last case in this court), appears to proceed in all respects on the line of reasoning we have been pursuing. The indictment in that case was identical in all its features with that in this case, except that the drugs were there dispensed by and through a prescription which called for 150 grains of heroin, 360 grains of morphine and 210 grains of cocaine. The court seems to have sustained the indictment only because of the enormous quantity of the drugs alleged to have been dispensed. Mr. Justice Day said in reasoning the case:

"It may be admitted that to prescribe a single dose, or even a number of doses, may not bring a physician within the penalties of the act; but what is here charged is that the defendant physician, by means of prescriptions, has enabled one, known to him to be an addict, to obtain from a pharmacist the enormous number of doses contained in 150 grains of heroin, 360 grains of morphine, and 210 grains of cocaine. As shown by Wood's United States Dispensatory, a standard work in general use, the ordinary dose of morphine is one-fifth of a grain, of cocaine one-

eighth to one-fourth of a grain, of heroin one-sixteenth to one-eighth of a grain. By these standards more than three thousand ordinary doses were placed in the control of King. Undoubtedly doses may be varied to suit different cases, as determined by the judgment of a physician. But the quantities named in the indictment are charged to have been intrusted to a person known by the physician to be an addict, without restraint upon him in its administration or disposition by anything more than his own weakened and perverted will. Such so-called prescriptions could only result in the gratification of a diseased appetite for these pernicious drugs, or result in an unlawful parting with them to others, in violation of the act as heretofore interpreted in this court, within the principles laid down in the Webb and Jim Fuy Moy Cases, *supra*."

The exception made by Mr. Justice Day in favor of cases where "a single dose or even a number of doses" were administered was forced, we submit, by a consideration of the constitutional principle to which we have been appealing. It is true that Justice Day in concluding his reasoning linked together as objectionable features of the transaction set forth in the indictment "the gratification of a diseased appetite for these pernicious drugs," and "an unlawful parting with them to others in violation of the act," but since the learned Justice was considering the language of the Narcotic Act alone, and for the purposes of the indictment alone, it seems probable that the difficulty of including in the same constitutional class the two

consequences enumerated, did not occur to him. The suggestion to that effect is greatly strengthened when it is remembered that if catering to a diseased appetite was in any sense a part of the offense denounced by the law, a single dose would have been as effective to that end as any number of doses.

The first of the cases in this court growing out of the Narcotic Act, we believe, was that of *Jin Fuey Moy vs. United States*, 241 U. S., 294, 66 Law Ed., 1061. The indictment in that case charged a conspiracy to have opium in possession contrary to the provisions of the Act. In consequence of the difficulty of reconciling such a prohibition with the reserved rights of the states, this court, speaking through Mr. Justice Holmes, decided that the offense of having opium in possession denounced by the Act, must be confined to that class of persons with which the statute undertakes to deal, the persons who are required to register by Section 1, saying, "It may be assumed that the statute has a moral end as well as revenue in view, but we are of opinion that the District Court in treating those ends as to be reached only through a revenue measure, and within the limits of a revenue measure, was right." By the words *and within the limits of a revenue measure*, we understand the court

to have meant within the limits necessary to the maintenance in their integrity of the provision of the revenue measure. If the prohibition against having opium in possession by others than those required to register was not essential to the integrity of the Narcotic Act as a revenue measure, was not necessary, in the language of Justice Day, to keep the traffic above board, then certainly the mere fugitive act of catering to the appetite of an addict cannot be said to be essential to that end.

The succeeding case of *U. S. vs. Doremus*, 249 U. S., 86, 63 Law Ed., 493, proceeded along the same lines as the last above case, citing from it and quoting from it with approval and measuring the act charged in the indictment by the same test, namely, "Have the provisions in question any relation to the raising of revenues?" Apparently it was the unreasonably large amount of the drug dispensed—500 one-sixth grain tablets of heroin—that induced the holding that the transaction proceeded against did in fact have some relation to the raising of revenue. The court, speaking through Mr. Justice Day, pointed out the relation in the following words:

"Congress, with full power over the subject, short of arbitrary and unreasonable action, which is not to be assumed inserted these provisions in

an act specifically providing for the raising of revenue. Considered of themselves, we think they tend to keep the traffic above board and subject to inspection by those authorized to collect the revenue. They tend to diminish the opportunity of unauthorized persons to obtain the drugs and sell them clandestinely without paying the tax imposed by the Federal Law. This case well illustrates the possibility which may have induced Congress to insert the provisions limiting sales to registered dealers, and requiring patients to obtain these drugs as a medicine from physicians or upon regular prescriptions. Ameris, being, as the indictment charges, an addict, may not have used this great number of doses for himself. He might sell some to others without paying the tax; at least, Congress may have deemed it wise to prevent such possible dealings because of their effect upon the collection of the revenue."

To the decision in that case rendered by a majority of the court, the Chief Justice and Mr. Justice McKenna, Van Devanter and McReynolds dissented on the ground, stated by the Chief Justice as follows:

"The Chief Justice dissents because he is of opinion that the court below correctly held the Act of Congress, in so far as it embraced the matters complained of, to be beyond the constitutional power of Congress to enact because to such extent the statute was a mere attempt by Congress to exert a power not delegated; that is, the reserved police power of the states."

The next case, *Webb vs. United States*, 249 U. S., 96; 63 Law Ed., p. 497, would appear at first blush

to be irreconcilable with the application made by us of the former decisions. That case came up on a certificate of division of opinion, and among others propounded the following question:

"3. If a practicing and registered physician issues an order for morphine to an habitual user thereof, the order not being issued by him in the course of professional treatment in the attempted cure of the habit, but being issued for the purpose of providing the user with morphine sufficient to keep him comfortable by maintaining his customary use, is such order a physician's prescription under exception (b) of Section 2?"

The court answered the question shortly as follows:

"As to question three, to call such an order for the use of morphine a physician's prescription would be so plain a perversion of meaning that no discussion of the subject is required. That question should be answered in the negative."

There was the like dissent by the Chief Justice and Justices McKenna, Van Devanter and McReynolds as that made in the Doremus case.

In the first place, it is impossible to think that Justice Day intended to depart from the considered judgment of the court rendered in *Jin Fuey Moy vs. United States*, *supra*, and *United States vs. Doremus*, *supra*, especially as in the later case of *United States vs. Behrman*, *supra*, he maintained the doctrine of those cases, and decided that not one or even a number

of fugitive doses administered by a physician would bring him within the prohibitions of the Act. Justice Day, it would appear, was answering the question propounded in the Webb case, not in the abstract, but in the light of the facts, also certified from below, namely, "that Webb regularly charged 50 cents for each so-called prescription, and within this period had furnished, and Goldbaum had filed, over four thousand such prescriptions; and that one Rabens, a user of the drug, came from another state and applied to Webb for morphine, and was given at one time ten so-called prescriptions for one drachm each, which prescriptions were filled at one time by Goldbaum upon Raben's presentation, although each was made out in a separate and fictitious name." Such conduct was a bare-faced palpable fraud on the law, and ought on any view of its purpose be held to constitute a conspiracy to violate it, and, in that view, the abstract question propounded might well be answered in the negative without considering the line of demarcation between a fugitive administration of the drug for immediate effect, and one of such character and size that it might result in impairing the revenue features of the law. Certainly in the preceding cases, and in the later cases of *United States vs. Behrman*, opinion by Justice Day, this court was careful to con-

fine the scope of its decisions to acts which Congress might constitutionally prohibit because necessary to the effectual enforcement of the Narcotic Act as a revenue measure.

The second case of *Jin Fuey Moy vs. United States*, 254 U. S., 189, opinion by Mr. Justice Pitney, considered all constitutional questions as settled by former decisions of this court, and looking at the case from the standpoint only of the sufficiency of the evidence which showed continued and persistent issuing of prescriptions of drugs in very large quantities, declared:

"Manifestly the phrase 'to a patient' and 'in the course of his professional practice only' are intended to confine the immunity of a registered physician in dispensing the narcotic drugs mentioned in the act strictly within the bounds of a physician's professional practice, and not to extend it to include a sale to a dealer, or a distribution intended to cater to the appetite or satisfy the cravings of one addicted to the use of the drug. A 'prescription' issued for either of the latter purposes protects neither the physician who issues it, nor the dealer who knowingly accepts and fills it."

What was said with respect to the *Webb* case applies to this case, but this case proceeded strictly on the *Webb* case, citing it to the passage quoted, and without any examination of the principles on which that case proceeded.

If it be thought that the general language in *Webb vs. The United States*, *supra*, re-affirmed in the second *Jin Fuey Moy* case, is such, if adhered to, as to logically foreclose the question here raised, then we submit, in view of the fact that there was a dissent by four out of the nine Justices in that case, and in view of the further fact that the language referred to as foreclosing the question is not consistent with the language of the majority opinions in other cases, concurred in by Mr. Justice Day, and in the later case of *United States vs. Behrman*, opinion by Justice Day, that the matter ought now to be considered *de novo* and an authoritative pronouncement made which will set the question at rest one way or the other.

It is a well-known fact that the lower federal courts are overwhelmed by a mass of business properly belonging to the state courts, thrust on them by congressional legislation ostensibly in aid of some federal grant of power. Under the pretense of raising taxes, of regulating interstate commerce, or of establishing post offices and post roads, an enormous mass of legislation has been built up by Congress, covering almost every conceivable phase of health, morals and police, and thereby, in most cases, by hanging the legislation on a constitutional peg that does not support it, invading the reserved power of the states. A most

glaring but amusing instance of such legislation is that passed for the protection of migratory birds, and making it a criminal offense to hunt and kill certain game and insectivorous birds which pass through and do not remain permanently the entire year within the border of any state or territory. (Act of March 4, 1913, 37 Stat. L. 847.) This Act was predicated, apparently from its reading, on the power of the nation to regulate commerce between the states and between the states and foreign countries, and requires the court to find, if the Act is to be sustained, that a wild goose flying from the Arctic Circle to the Gulf of Mexico, is engaged in interstate commerce.

An observation by Judge Bourquin of the District Court of Montana, with respect to the overleaping tendency of Congress, and its effect on the Federal Courts, is so much in point in this connection that we reproduce it.

"It is true Congress is constantly restricting the jurisdiction of the federal courts, in only important causes, however, for it is also true that it is constantly extending their jurisdiction to trivial causes and to causes virtually filched from the states' police power, until they are crowded with white slavers, pimps, prostitutes, and panders, drug peddlers and addicts, bootleggers and poachers. This court was lately horrified to find all its machinery in motion and with a jury engaged in trying (God save us) five reputable

citizens upon a charge of having joint possession of one dead hell-diver."

Yellowstone-Merchants' Nat. Bank vs. Rosenbaum Bros. & Co., 277 Fed. R., p. 69.

All this is notorious. It fills the newspapers and is matter of daily comment between citizens. It has engaged the attention of the National Bar Association, and has been under consideration by the Chief Justice of this court in connection with an effort to find some relief for the submerged Federal District Courts. We suggest as one very natural and efficient means to that end that the legislation of Congress be subjected in all cases to rigid scrutiny with respect to the propriety of the means adopted to secure the pretended constitutional end of such legislation.

Respectfully submitted,

TURNER, NUZUM & NUZUM,
Attorneys for Petitioner.

GEORGE TURNER,
Of Counsel.

In the Supreme Court of the United States.

OCTOBER TERM, 1923.

CHARLES O. LINDER, PETITIONER,

v.

THE UNITED STATES,

No. 581.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

BRIEF FOR THE UNITED STATES IN OPPOSITION.

STATEMENT.

The petition in the above entitled cause should be denied for the following reasons:

1. The sufficiency of the indictment was not challenged in the trial court, and the opinion of the Circuit Court of Appeals affirming the judgment of conviction discloses that the point was not pressed in that court. In this situation petitioner ought not now be permitted to urge it as an adequate ground for the exercise of this court's discretionary jurisdiction on certiorari.

2. The allegations of the indictment, at least after verdict, and for the purposes of the present petition, support the view that the good faith of the defendant is sufficiently negatived. See *Jin Fuey Moy v. United States*, 254 U. S. 189, 194, specifically approved in *United States v. Behrman*, 258 U. S. 280, 287, 288.

3. It is too late to attack the constitutionality of the narcotic statute on the ground that there is a lack of Federal power to punish the dispensing of narcotics to satisfy the mere cravings of addicts where such dispensing is done by those who register and pay the tax. The *Behrman case, supra*, on this point, can not be differentiated from the case at bar on the ground that larger quantities of the drug were involved there than here. The opinion of this court in the *Behrman case, supra*, at page 289, is pertinent. It reads as follows:

But the quantities named in the indictment are charged to have been entrusted to a person known by the physician to be an addict without restraint upon him in its administration or disposition by anything more than his own weakened and perverted will. Such so-called prescriptions could only result in the gratification of a diseased appetite for these pernicious drugs or result in an unlawful parting with them to others in violation of the act as heretofore interpreted in this court within the principles laid down in the *Webb* and *Jin Fuey Moy cases, supra*.

JAMES M. BECK,
Solicitor General.

JOHN W. H. CRIM,
Assistant Attorney General.

HARRY S. RIDGELY,
Attorney.

OCTOBER, 1923.



In the Supreme Court of the United States

OCTOBER TERM, 1924

C. O. LINDER, PETITIONER	} No. 183
v.	
THE UNITED STATES	

*ON A WRIT OF CERTIORARI TO THE UNITED STATES CIR-
CUIT COURT OF APPEALS FOR THE NINTH CIRCUIT*

BRIEF FOR THE UNITED STATES

STATEMENT

This case is before the court on a writ of certiorari granted at the October, 1923, Term, to review a judgment of the United States Circuit Court of Appeals, affirming the conviction of petitioner in the United States District Court for the Eastern District of Washington. The indictment was founded upon the so-called Harrison Narcotic Act of December 17, 1914, 38 Stat. 785, as amended February 24, 1919, 40 Stat. 1130.

ARGUMENT

I

The writ of certiorari in this case should be dismissed on the ground that it was improvidently granted

The sole question now presented by petitioner is whether the indictment here involved states an offense which Congress had the constitutional power to create. Neither in the trial court nor in the Circuit Court of Appeals did petitioner in anywise assail the validity of the indictment. He appears to have reserved that point of attack for utilization in securing a review of the case by this court. It was his duty to have raised the alleged constitutional issue in the trial court, and in the event of an adverse ruling, availed of the statutory right to bring the case here for review on writ of error under Section 238 of the Judicial Code. This court has recently been insisting upon adherence to the orderly and established procedure of review, and no facts or circumstances now presented require that this case be made exceptional. *Ex parte Riddle*, 255 U. S. 450, 451; *idem.* 262 U. S. 333, 335; *Goto v. Lane*, 265 U. S. 393, 401; *Pickett v. United States*, 216 U. S. 456, 462.

As said by this court in *Magnum v. Coty*, 262 U. S. 159, 163, in speaking of its authority to issue certiorari, "the jurisdiction was not conferred upon this court merely to give the defeated party in the Circuit Court of Appeals another hearing." See also *Lutcher & Moore Lumber Co. v. Knight*,

217 U. S. 257, 267-268; *Southern Power Co. v. Public Service Co.*, 263 U. S. 508, 509; *Grant Bros. v. United States*, 232 U. S. 647, 661.

II

On the merits

Should the court determine that the writ of certiorari granted in this case, should not be dismissed, then it is respectfully submitted that the judgment below should be affirmed for the following reasons:

1. Petitioner contends in substance that if the indictment and the statute upon which it is founded, be construed as charging the administration of drugs merely to gratify the appetite of an addict, such an offense is beyond the power of Congress to create (brief petitioner pp. 11, 12, 25).

This is precisely what the indictment and the statute cover, and what this court intended to uphold in *United States v. Behrman*, 258 U. S. 280, 287, 288, as shown by the following excerpt from the opinion in that case (p. 289):

But the quantities named in the indictment are charged to have been entrusted to a person known by the physician to be an addict without restraint upon him in its administration or disposition by anything more than his own weakened and perverted will. Such so-called prescriptions could only result in the gratification of a diseased appetite for these pernicious drugs or result in an unlawful parting with them to others in violation of the act as heretofore interpreted in

this court within the principles laid down in the *Webb* and *Jin Fuey Moy Cases*, *supra*.

The indictment in the case at bar is framed in the same language as the indictment in the above-mentioned *Behrman case*, except for the amount of the drug alleged to have been sold or distributed otherwise than in the course of professional practice. No distinction, however, can be made between the two cases on the ground merely of the difference between the amounts of drugs which are charged in the two indictments. In the *Behrman case*, *supra*, this court had before it only the strict allegations of the indictment, and for that purpose the amount of the drug becomes immaterial in determining whether the indictment actually and sufficiently charges it to have been unlawfully sold or distributed.

It necessarily follows, therefore, that under the *Behrman case*, *supra*, the indictment in the case at bar states an offense within the power of Congress to punish.

2. Moreover, the case on the record shows a plain purpose on the part of petitioner not to treat the addict in a purely professional way but merely for a money consideration, to make it possible for the addict to obtain the drug solely for the gratification of his addiction.

The judgment below is also supported by *Hobart v. United States*, 299 Fed. 784, wherein the court said:

The case of *United States v. Behrman*, 258 U. S. 280, 288, 42 Sup. Ct. 303, 66 L. Ed. 619, destroys the theory of the defense upon the present trial. Since that decision there is no possibility that conduct such as Hobart admitted could be lawful. The patient was not under restraint. Hobart furnished to him, at frequent intervals and for self-administration, large quantities of morphine, though in quantities diminishing from one time to another; but the patient was at liberty to apply to other doctors and get as many other similar prescriptions as he could.

So in the case at bar the addict was under no restraint and was at liberty to apply to other physicians for so-called prescriptions. This she probably did.

See also *Simmons v. United States*, 300 Fed. 321, 322.

3. Petitioner also contends that the indictment is capable of the construction, in substance, of charging that the drug was given in the professional treatment of addiction. The *Behrman case*, *supra*, must be held to dispose adversely of such claim, for if the indictment there, of which the indictment at bar is a duplicate in allegation, had been capable of such construction, this court would have said so. Of course, the indictment must be taken by its four corners when undertaking to determine what it actually alleges. It is not permissible to dissect it, and base an attack upon a single excerpted phrase. The indictment here, like that

in the Behrman case, supra, when construed as a whole, plainly charges an unlawful distribution of the drug.

III

It is respectfully submitted that the writ granted in this case should be dismissed as improvidently granted, or in the alternative the judgment below affirmed.

JAMES M. BECK,
Solicitor General.

WILLIAM J. DONOVAN,
Assistant Attorney General.

HARRY S. RIDGELY,
Attorney.

FEBRUARY, 1925.

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LINDER v. UNITED STATES.

**CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE
NINTH CIRCUIT.**

No. 183. Submitted March 9, 1925.—Decided April 13, 1925.

1. Any provision of an act of Congress ostensibly enacted under power granted by the Constitution, not naturally and reasonably adapted to the effective exercise of such power but solely to the achievement of something plainly within the power reserved to the States, is invalid and can not be enforced. P. 17.
2. Direct control of medical practice in the States is obviously beyond the power of Congress. P. 18.
3. Incidental regulation of such practice by Congress through a taxing act, like the Narcotic Law, can not extend to matters plainly inappropriate and unnecessary to reasonable enforcement of a revenue measure. P. 18.

4. An act of Congress must be construed, if fairly possible, so as to avoid not only the conclusion that it is unconstitutional but also grave doubts upon that score. P. 17.
 5. Section 2 of the Narcotic Law, declares it unlawful for any person to sell, give away etc., any of the drugs mentioned in the act except in pursuance of an order of the person to whom the article is sold, etc., written on an official blank, but does not apply "to the dispensing or distribution of the aforesaid drugs to a patient by a physician . . . registered under this Act in the course of his professional practice only." Held inapplicable to a case where a physician, acting *bona fide* and according to fair medical standards, gives an addict moderate amounts of the drugs for self-administration in order to relieve conditions incident to addiction. P. 16.
 6. What constitutes *bona fide* medical practice, consistent with the statute, depends upon the facts and circumstances of the case. P. 18.
- 290 Fed. 173, reversed.

CERTIORARI to a judgment of the Circuit Court of Appeals affirming a conviction under the Narcotic Law.

Mr. George Turner, for petitioner.

Sub-section (a) of § 2 excepts "the dispensing or distribution of any of the aforesaid drugs to a patient by a physician, dentist, or veterinary surgeon registered under the Act in the course of his professional practice only." The lower courts have engrafted on this exception without any sufficient reason the further requirement that the dispensing or distribution must not only have been in the course of the professional practice of the physician, but that the drugs must have been dispensed or distributed in good faith as medicine, and not to satisfy the cravings of an addict. Other cases holding the same doctrine are *Manning v. United States*, 287 Fed. 800; *Melanson v. United States*, 356 Fed. 783; *Thompson v. United States*, 258 Fed. 196. The term "addict" is not used in the entire Narcotic Act, and the only mention of "good faith" is found in § 8, where, after making it unlawful for any person not registered to have in pos-

session or under his control any of the drugs, a number of exceptions are made, among which is one in favor of those having possession of drugs which may "have been prescribed in good faith by a physician, dentist or veterinary surgeon registered under this Act." Apart from the difficulty of applying provisions relating to one offense to another separate and distinct offense, there are two other very good reasons why the good faith provision in the above exception can have no reference to or influence in construing the exception in favor of registered physicians provided for by sub-section (a) of § 2. The first is the decision of this court in *United States v. Jin Fuey Moy*, 241 U. S. 394, in which it was determined that the provision of § 8 against having drugs in possession must be construed as leveled at only those required to register and entitled to register and to procure order blanks; and consequently the good faith provision can have no reference to the dispensing and distribution of drugs to people in general, because they are not entitled to register or to procure order blanks.

Second, an exception to the having drugs in possession cannot be imported into the exception in favor of registered physicians dispensing or distributing the drugs. The two things are entirely different in the considerations which govern them and in the gravity of the act as tending to impair the revenue features of the law. A person entitled to register, but not registered, having the drugs in possession, may very well be considered as presumptively engaged in their clandestine distribution, and therefore to be protected in their possession only by a good faith prescription, and the good faith of the prescription as to him be matter of proper concern. A registered physician, on the other hand, dispensing drugs to patients and keeping the record required, is above board at least, whatever the motive for dispensing the drugs, and no harm can accrue to the administration of the law by

his act, or if harm come, it is infinitesimal, and not worthy of consideration under the maxim *de minimus non curat lex*.

If the exception found in § 2 stands alone, and is not influenced by anything except the general purpose of the law, what dispensing or distribution of drugs to patients may be reasonably considered as "in the course of his professional practice only?" That question, we submit, cannot be answered by the application of any hard and fast rule.

It is the business of the physician to alleviate the pain and suffering of patients as well as to effectuate their cure. If we are to believe the literature on the subject, the suffering of an addict caused by deprivation of his customary drug is as intense as any suffering caused by disease. It is perhaps more so in the insistent demand for relief. Why should not the physician in the course of his ordinary practice take cognizance of that fact and administer temporary relief? It is, we submit, a strained construction of the law to hold that the language in question was intended to prohibit such an act, especially in view of the fact that the entire framework of the law shows that it was intended, not to regulate health and morals, but to make regulations with respect to the drug traffic which would keep it above board for the benefit of States and municipalities which do have authority and duty in that direction.

The indictment states no offense even under the construction of the Narcotic Act prevailing in the lower courts. There is nothing in it to negative that the drugs here were dispensed in good faith in the ordinary course of professional practice. It is a well-known fact that one of the means of treating addiction to morphine, or any of the habit-forming drugs, is the administration of diminishing quantities of the drug until the addict is finally weaned away from the habit. In *United States v.*

Behrman, supra, it was only the extraordinary quantity of the drug dispensed that enabled the court to find in the acts charged in the indictment an infraction of the law.

If the mere catering to a diseased appetite in the matter of narcotic drugs, even where such catering has no tendency to impair the revenue features of the Narcotic Act, or so slight a tendency as to be negligible, be held to be within the prohibition of that Act, then the said Act to that extent is clearly unconstitutional.

The Solicitor General, Assistant Attorney General Donovan, and Mr. Harry S. Ridgely, Attorney in the Department of Justice, for the United States.

The writ of certiorari should be dismissed on the ground that it was improvidently granted. The sole question now presented is whether the indictment states an offense which Congress had the constitutional power to create. Neither in the trial court nor in the Circuit Court of Appeals did petitioner in anywise assail the validity of the indictment. It was his duty to have raised the alleged constitutional issue in the trial court, and in the event of an adverse ruling, availed of the statutory right to bring the case here for review on writ of error under § 238 of the Judicial Code. *Ex parte Riddle*, 255 U. S. 450, 451; *idem* 262 U. S. 333, 335; *Goto v. Lane*, 265 U. S. 393, 401; *Pickett v. United States*, 216 U. S. 456, 462; *Magnum v. Coty*, 262 U. S. 159, 163; *Lutcher & Moore Lumber Co. v. Knight*, 217 U. S. 257, 267-268; *Sou. Power Co. v. Pub. Ser. Co.* 263 U. S. 508, 509; *Grant Bros. v. United States*, 232 U. S. 647, 661.

Petitioner contends in substance that if the indictment and the statute upon which it is founded be construed as charging the administration of drugs merely to gratify the appetite of an addict, such an offense is beyond the power of Congress to create. This is precisely what the

indictment and the statute cover, and what this Court intended to uphold in *United States v. Behrman*, 258 U. S. 280, 287, 288. The indictment is framed in the same language as the indictment in the *Behrman Case*, except for the amount of the drug alleged to have been sold or distributed otherwise than in the course of professional practice. No distinction, however, can be made on the ground merely of the difference between amounts of drugs. In the *Behrman Case*, this Court had before it only the strict allegations of the indictment, and for that purpose the amount of the drug becomes immaterial in determining whether the indictment actually and sufficiently charges it to have been unlawfully sold or distributed.

Moreover, the case on the record shows a plain purpose on the part of petitioner not to treat the addict in a purely professional way but merely for a money consideration, to make it possible for the addict to obtain the drug solely for the gratification of his addiction. *Hobart v. United States*, 299 Fed. 784; *Simmons v. United States*, 300 Fed. 321.

The indictment is incapable of the construction of charging that the drug was given in the professional treatment of addiction.

MR. JUSTICE McREYNOLDS delivered the opinion of the Court.

The court below affirmed the conviction of petitioner by the District Court, Eastern District of Washington, under the following count of an indictment returned therein June 26, 1922. As to all other counts the jury found him not guilty.

"Count II. And the Grand Jurors aforesaid upon their oaths do further present: That Charles O. Linder, whose other or true name is to the Grand Jurors unknown, hereinafter in this indictment called the defendant, late of

the County of Spokane, State of Washington, heretofore, to-wit; on or about the first day of April, 1922, at Spokane, in the Northern Division of the Eastern District of Washington, and within the jurisdiction of this Court, did then and there violate the Act of December 17, 1914, entitled 'An Act to provide for the registration of, with Collectors of Internal Revenue, and to impose a special tax upon all persons who produce, import, manufacture, compound, deal in, dispense, sell, distribute, or give away opium or coca leaves, their salts, derivatives, or preparations, and for other purposes,' as amended February 24, 1919, in that he did then and there knowingly, wilfully and unlawfully sell, barter and give to Ida Casey a compound, manufacture and derivative of opium, to-wit: one (1) tablet of morphine and a compound, manufacture and derivative of coca leaves, to-wit: three (3) tablets of cocaine, not in pursuance of any written order of Ida Casey on a form issued for that purpose by the Commissioner of Internal Revenue of the United States; that the defendant was a duly licensed physician and registered under the Act; that Ida Casey was a person addicted to the habitual use of morphine and cocaine and known by the defendant to be so addicted; that Ida Casey did not require the administration of either morphine or cocaine by reason of any disease other than such addiction; that the defendant did not dispense any of the drugs for the purpose of treating any disease or condition other than such addiction; that none of the drugs so dispensed by the defendant was administered to or intended by the defendant to be administered to Ida Casey by the defendant or any nurse, or person acting under the direction of the defendant; nor were any of the drugs consumed or intended to be consumed by Ida Casey in the presence of the defendant, but that all of the drugs were put in the possession or control of Ida Casey with the intention on the part of the defendant that Ida Casey

would use the same by self-administration in divided doses over a period of time, the amount of each of said drugs dispensed being more than sufficient or necessary to satisfy the cravings of Ida Casey therefor if consumed by her all at one time; that Ida Casey was not in any way restrained or prevented from disposing of the drugs in any manner she saw fit and that the drugs so dispensed by the defendant were in the form in which said drugs are usually consumed by persons addicted to the habitual use thereof to satisfy their craving therefor and were adapted for consumption. Contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States."

The Harrison Narcotic Law, approved Dec. 17, 1914, c. 1, 38 Stat. 785—twelve sections—is entitled: "An Act to provide for the registration of, with collectors of internal revenue, and to impose a special tax upon all persons who produce, import, manufacture, compound, deal in, dispense, sell, distribute, or give away opium or coca leaves, their salts, derivatives, or preparations, and for other purposes."

Sec. 1 provides—"That on and after the first day of March, nineteen hundred and fifteen, every person [with exceptions not here important] who produces, imports, manufactures, compounds, deals in, dispenses, sells, distributes, or gives away opium or coca leaves or any compound, manufacture, salt, derivative, or preparation thereof, shall register with the Collector of Internal Revenue," and shall pay a special annual tax of one dollar. Also, "It shall be unlawful for any person required to register under the terms of this Act to produce, import, manufacture, compound, deal in, dispense, sell, distribute, or give away any of the aforesaid drugs without having registered and paid the special tax provided for in this section. . . . The Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury,

shall make all needful rules and regulations for carrying the provisions of this Act into effect."

Sec. 2 provides—"That it shall be unlawful for any person to sell, barter, exchange, or give away any of the aforesaid drugs except in pursuance of a written order of the person to whom such article is sold, bartered, exchanged, or given, on a form to be issued in blank for that purpose by the Commissioner of Internal Revenue." [The giver is required to retain a duplicate and the acceptor to keep the original order for two years, subject to inspection.] "Nothing contained in this section shall apply—

"(a) To the dispensing or distribution of any of the aforesaid drugs to a patient by a physician, dentist, or veterinary surgeon registered under this Act in the course of his professional practice only: Provided, That such physician, dentist, or veterinary surgeon shall keep a record of all such drugs dispensed or distributed, showing the amount dispensed or distributed, the date, and the name and address of the patient to whom such drugs are dispensed or distributed, except such as may be dispensed or distributed to a patient upon whom such physician, dentist, or veterinary surgeon shall personally attend; and such record shall be kept for a period of two years from the date of dispensing or distributing such drugs, subject to inspection, as provided in this Act.

"(b) . . . (c) . . . (d) . . .

"The Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall cause suitable forms to be prepared for the purposes above mentioned. . . . It shall be unlawful for any person to obtain by means of said order forms any of the aforesaid drugs for any purpose other than the use, sale, or distribution thereof by him in the conduct of a lawful business in said drugs or in the legitimate practice of his profession. . . ."

Sec. 8. "That it shall be unlawful for any person not registered under the provisions of this Act, and who has not paid the special tax provided for by this Act, to have in his possession or under his control any of the aforesaid drugs; and such possession or control shall be presumptive evidence of a violation of this section, and also of a violation of the provisions of Section One of this Act: *Provided*, That this section shall not apply to any employee of a registered person, or to a nurse under the supervision of a physician, dentist, or veterinary surgeon registered under this Act, having such possession or control by virtue of his employment or occupation and not on his own account; or to the possession of any of the aforesaid drugs which has or have been prescribed in good faith by a physician, dentist, or veterinary surgeon registered under this Act; or to any United States, State, county, municipal, District, Territorial, or insular officer or official who has possession of any said drugs, by reason of his official duties, or to a warehouseman holding possession for a person registered and who has paid the taxes under this Act; or to common carriers engaged in transporting such drugs: *Provided further*, That it shall not be necessary to negative any of the aforesaid exemptions in any complaint, information, indictment, or other writ or proceeding laid or brought under this Act; and the burden of proof of any such exemption shall be upon the defendant."

Sec. 9. "That any person who violates or fails to comply with any of the requirements of this Act shall, on conviction, be fined not more than \$2,000 or be imprisoned not more than five years, or both, in the discretion of the court."

Section 1 was amended by the Act of February 24, 1919, c. 18, 40 Stat. 1057, 1130. This increased the special annual tax to twenty-four dollars on importers, manufacturers, producers and compounders, twelve dollars on wholesale dealers, six dollars on retail dealers, and three

dollars on "physicians, dentists, veterinary surgeons and other practitioners lawfully entitled to distribute, dispense, give away, or administer any of the aforesaid drugs to patients upon whom they in the course of their professional practice are in attendance." It also added a provision requiring that stamps—one cent for each ounce—should be affixed to every package of opium, coca leaves, any compound, salt, derivative or preparation thereof, produced in or imported into the United States and sold or removed for consumption or sale, and then, the following paragraph—

"It shall be unlawful for any person to purchase, sell, dispense, or distribute any of the aforesaid drugs except in the original stamped package or from the original stamped package; and the absence of appropriate tax-paid stamps from any of the aforesaid drugs shall be prima facie evidence of a violation of this section by the person in whose possession same may be found; and the possession of any original stamped package containing any of the aforesaid drugs by any person who has not registered and paid special taxes as required by this section shall be prima facie evidence of liability to such special tax: *Provided* That the provisions of this paragraph shall not apply . . . to the dispensing, or administration, or giving away of any of the aforesaid drugs to a patient by a registered physician, dentist, veterinary surgeon, or other practitioner in the course of his professional practice, and where said drugs are dispensed or administered to the patient for legitimate medical purposes, and the record kept as required by this Act of the drugs so dispensed, administered, distributed, or given away."

Manifestly, the purpose of the indictment was to accuse petitioner of violating § 2 of the Narcotic Law, and the trial court so declared. Shortly given the alleged facts follow: Petitioner, a duly licensed and registered physician, without an official written order therefor, know-

ingly, wilfully and unlawfully did sell, barter and give to Ida Casey one tablet of morphine and three tablets of cocaine; he knew she was addicted to habitual use of these drugs and did not require administration of either because of any disease other than such addiction, and he did not dispense them for the treatment of any other disease or condition; they were not administered by him or by any nurse or other person acting under his direction, nor were they consumed or intended for consumption in his presence; the amount was more than sufficient to satisfy the recipient's cravings if wholly consumed at one time; petitioner put the drugs into her possession expecting that she would administer them to herself in divided doses over a period of time; they were in the form in which addicts usually consume them to satisfy their cravings; the recipient was in no way prevented or restrained from disposing of them.

Petitioner maintains that the facts stated are not sufficient to constitute an offense. The United States submit that, considering *United States v. Behrman*, 258 U. S. 280, the sufficiency of the indictment is clear.

The trial court charged—

“If you are satisfied beyond a reasonable doubt that defendant knew that this woman was addicted to the use of narcotics, and if he dispensed these drugs to her for the purpose of catering to her appetite or satisfying her cravings for the drug, he is guilty under the law. If, on the other hand, you believe from the testimony that the defendant believed in good faith this woman was suffering from cancer or ulcer of the stomach, and administered the drug for the purpose of relieving her pain, or if you entertain a reasonable doubt upon that question, you must give the defendant the benefit of the doubt and find him not guilty.”

In effect, the indictment alleges that the accused, a duly registered physician, violated the statute by giving

to a known addict four tablets containing morphine and cocaine with the expectation that she would administer them to herself in divided doses, while unrestrained and beyond his presence or control, for the sole purpose of relieving conditions incident to addiction and keeping herself comfortable. It does not question the doctor's good faith nor the wisdom or propriety of his action according to medical standards. It does not allege that he dispensed the drugs otherwise than to a patient in the course of his professional practice or for other than medical purposes. The facts disclosed indicate no conscious design to violate the law, no cause to suspect that the recipient intended to sell or otherwise dispose of the drugs, and no real probability that she would not consume them.

The declared object of the Narcotic Law is to provide revenue, and this court has held that whatever additional moral end it may have in view must "be reached only through a revenue measure and within the limits of a revenue measure." *United States v. Jin Fuey Moy*, 241 U. S. 394, 402. Congress cannot, under the pretext of executing delegated power, pass laws for the accomplishment of objects not entrusted to the Federal Government. And we accept as established doctrine that any provision of an act of Congress ostensibly enacted under power granted by the Constitution, not naturally and reasonably adapted to the effective exercise of such power but solely to the achievement of something plainly within power reserved to the States, is invalid and cannot be enforced. *McCulloch v. Maryland*, 4 Wheat. 316, 423; *License Tax Cases*, 5 Wall. 462; *United States v. DeWitt*, 9 Wall. 41; *Keller v. United States*, 213 U. S. 138; *Hammer v. Dagenhart*, 247 U. S. 251; *Child Labor Tax Case*, 259 U. S. 20. In the light of these principles and not forgetting the familiar rule, that "a statute must be construed, if fairly possible, so as to avoid not only the conclusion that it is

unconstitutional but also grave doubts upon that score," the provisions of this statute must be interpreted and applied.

Obviously, direct control of medical practice in the States is beyond the power of the Federal Government. Incidental regulation of such practice by Congress through a taxing act cannot extend to matters plainly inappropriate and unnecessary to reasonable enforcement of a revenue measure. The enactment under consideration levies a tax, upheld by this court, upon every person who imports, manufactures, produces, compounds, sells, deals in, dispenses or gives away opium or coca leaves or derivatives therefrom, and may regulate medical practice in the States only so far as reasonably appropriate for or merely incidental to its enforcement. It says nothing of "addicts" and does not undertake to prescribe methods for their medical treatment. They are diseased and proper subjects for such treatment, and we cannot possibly conclude that a physician acted improperly or unwisely or for other than medical purposes solely because he has dispensed to one of them, in the ordinary course and in good faith, four small tablets of morphine or cocaine for relief of conditions incident to addiction. What constitutes *bona fide* medical practice must be determined upon consideration of evidence and attending circumstances. Mere pretense of such practice, of course, cannot legalize forbidden sales, or otherwise nullify valid provisions of the statute, or defeat such regulations as may be fairly appropriate to its enforcement within the proper limitations of a revenue measure.

United States v. Jin Fuey Moy, supra, points out that the Narcotic Law can be upheld only as a revenue measure. It must be interpreted and applied accordingly. Further, grave constitutional doubts concerning § 8 cannot be avoided unless limited to persons who are required to register by § 1. Mere possession of the drug creates no presumption of guilt as against any other person.

In *United States v. Doremus*, 249 U. S. 86, 93, 95, a registered physician was accused of unlawfully selling, giving away and distributing five hundred one-sixth grain tablets of heroin without official written order. Another count charged selling, dispensing and distributing five hundred such tablets not in the course of regular professional practice. The trial court held § 2 invalid because it invaded the police power of the State. This court declared: "Of course Congress may not in the exercise of federal power exert authority wholly reserved to the States. . . . If the legislation enacted has some reasonable relation to the exercise of the taxing authority conferred by the Constitution, it cannot be invalidated because of the supposed motives which induced it. . . . We cannot agree with the contention that the provisions of § 2, controlling the disposition of these drugs in the ways described, can have nothing to do with facilitating the collection of the revenue, as we should be obliged to do if we were to declare this Act beyond the power of Congress acting under its constitutional authority to impose excise taxes." The sharp division of the court in this cause and the opinion in *Jin Fuey Moy's Case* clearly indicated that the statute must be strictly construed and not extended beyond the proper limits of a revenue measure.

Webb v. United States, 249 U. S. 96, 99, came here on certified questions. Two were answered upon authority of *Doremus' Case*. The third inquired whether a regular physician's order for morphine issued to an addict, not in the course of professional treatment with design to cure the habit, but in order to provide enough of the drug to keep him comfortable by maintaining his customary use, is a "physician's prescription." The answer was that "to call such an order for the use of morphine a physician's prescription would be so plain a perversion of meaning that no discussion of the subject is required." The lower

court had sought instruction in order that it might decide the particular cause. The question specified no definite quantity of drugs, nor the time intended for their use. The narrated facts show, plainly enough, that physician and druggist conspired to sell large quantities of morphine to addicts under the guise of issuing and filling orders. The so-called prescriptions were issued without consideration of individual cases and for the quantities of the drugs which applicants desired for the continuation of customary use. The answer thus given must not be construed as forbidding every prescription for drugs, irrespective of quantity, when designed temporarily to alleviate an addict's pains, although it may have been issued in good faith and without design to defeat the revenues. This limitation of the reply is confirmed by *Behrman's Case*, 258 U. S. 280, (*infra*) decided three years later, which suggests at least that the accused doctor might have lawfully dispensed some doses.

In *Jin Fuey Moy v. United States*, 254 U. S. 189, 194, doctor and druggist conspired to sell opiates. The prescriptions were not issued in the course of professional practice. The doctor became party to prohibited sales. "Manifestly the phrases 'to a patient' and 'in the course of his professional practice only' are intended to confine the immunity of a registered physician, in dispensing the narcotic drugs mentioned in the Act, strictly within the appropriate bounds of a physician's professional practice, and not to extend it to include a sale to a dealer or a distribution intended to cater to the appetite or satisfy the craving of one addicted to the use of the drug. A 'prescription' issued for either of the latter purposes protects neither the physician who issues it nor the dealer who knowingly accepts and fills it."

The quoted language must be confined to circumstances like those presented by the cause. In reality, the doctor became party to sales of drugs. He received a

fixed sum per dram under guise of issuing prescriptions. The quoted words are repeated in *Behrman's Case*, which recognizes the possible propriety of prescribing small quantities.

United States v. Balint, 258 U. S. 250, 253, 254, holds—
“It is very evident from a reading of it [§ 2] that the emphasis of the section is in securing a close supervision of the business of dealing in these dangerous drugs by the taxing officers of the Government and that it merely uses a criminal penalty to secure recorded evidence of the disposition of such drugs as a means of taxing and restraining the traffic.”

United States v. Behrman, 258 U. S. 280, 287, came up under the Criminal Appeals Act. The indictment charged that Behrman, a registered physician, did unlawfully sell, barter and give to one King, an “addict,” one hundred and fifty grains of heroin, three hundred and sixty grains of morphine and two hundred and ten grains of cocaine, by issuing three prescriptions. Further, that the drugs were not intended or required for treatment of any disease or condition other than such addiction, but for self-administration over a period of several days. The question was, “Do the acts charged in this indictment constitute an offense within the meaning of the statute?” And replying, this court said—

“The District Judge who heard this case was of the opinion that prescriptions in the regular course of practice did not include the indiscriminate doling out of narcotics in such quantity to addicts as charged in the indictment. . . . In our opinion the District Judge who heard the case was right in his conclusion and should have overruled the demurrer. Former decisions of this court have held that the purpose of the exception is to confine the distribution of these drugs to the regular and lawful course of professional practice, and that not everything called a prescription is necessarily such. [*Webb v.*

United States and *Jin Fuey Moy v. United States*, *supra*, are cited.] . . . It may be admitted that to prescribe a single dose, or even a number of doses, may not bring a physician within the penalties of the Act; but what is here charged is that the defendant physician by means of prescriptions has enabled one, known by him to be an addict, to obtain from a pharmacist the enormous number of doses contained in 150 grains of heroin, 360 grains of morphine, and 210 grains of cocaine"—three thousand ordinary doses!

This opinion related to definitely alleged facts and must be so understood. The enormous quantity of drugs ordered, considered in connection with the recipient's character, without explanation, seemed enough to show prohibited sales and to exclude the idea of *bona fide* professional action in the ordinary course. The opinion cannot be accepted as authority for holding that a physician, who acts *bona fide* and according to fair medical standards, may never give an addict moderate amounts of drugs for self-administration in order to relieve conditions incident to addiction. Enforcement of the tax demands no such drastic rule, and if the Act had such scope it would certainly encounter grave constitutional difficulties.

The Narcotic Law is essentially a revenue measure and its provisions must be reasonably applied with the primary view of enforcing the special tax. We find no facts alleged in the indictment sufficient to show that petitioner had done anything falling within definite inhibitions or sufficient materially to imperil orderly collection of revenue from sales. Federal power is delegated, and its prescribed limits must not be transcended even though the end seem desirable. The unfortunate condition of the recipient certainly created no reasonable probability that she would sell or otherwise dispose of the few tablets entrusted to her; and we cannot say that by so dispens-

ing them the doctor necessarily transcended the limits of that professional conduct with which Congress never intended to interfere.

The judgment below must be reversed. The cause will be remanded to the District Court for further proceedings in harmony with this opinion.

Reversed.
